ASH AND DEBRIS CLEANUP GUIDANCE

Issued by the
County of San Diego and
the San Diego Regional Water Quality Control Board

October 28, 2003

Due to the recent fires, the San Diego Region is experiencing significant ash and debris deposition. County public health officials are recommending residents and businesses avoid using cleanup methods that may create additional health risks by re-suspending ash and particulate matter.

Although health protection should always remain the first concern during cleanup, it's also important to try and minimize the amount of runoff containing ash and debris that enters the storm water conveyance system (e.g., streets, gutters, culverts, and ditches). This ash and debris will ultimately be discharged untreated into creeks, bays, lagoons, and the ocean, where it can be detrimental to public and environmental health. To protect both public health and the environment, the County and the San Diego Regional Water Quality Control Board are providing the guidance below for use while cleaning up ash and debris.

This guidance will be posted on both the County of San Diego, Department of Public Works (http://www.sdcounty.ca.gov/dpw/watersheds/stormwater.html) and Regional Water Quality Control Board (http://www.swrcb.ca.gov/rwqcb9/) websites. It should be noted that these guidelines apply only during the current emergency situation; additional requirements regarding discharges to the storm water conveyance system apply under normal conditions. During the fires, many areas of the County are also under restricted water usage; some clean-up efforts may need to be delayed until these restrictions are removed.

Outdoor Clean-up

1. Try to wait until ash has stopped falling before cleaning up. This will limit the number of cleanup efforts needed, which can help reduce the amount of wash water entering storm water conveyance systems and receiving waters.

2. As a first step for cleaning, try to determine if ash and debris can be contained and cleaned up without washing the material into the storm water conveyance system. Wet clean up methods to consider include:

    a. Wash ash and debris into landscaped areas wherever possible;
    b. Use a damp mop to clean up ash and debris from small areas, such as patios;
    c. Dampen accumulated ash and debris and scrape it up or vacuum it up using an adequate filtering vacuum;

CALIFORNIA CODE OF REGULATIONS
TITLE 23. Division 3. Chapter 9. Waste Discharge Reports and Requirements
Article 1. Fees

ATTACHMENT B-9

Section 2200. Annual Fee Schedules

Each person for whom waste discharge requirements have been prescribed pursuant to section 13263 of the Water Code shall submit, to the State Board, an annual fee in accordance with the following schedules. The fee shall be submitted for each waste discharge requirement order issued to that person.

An Ambient Water Monitoring (AWM) surcharge will be added to each individual fee. The AWM surcharge for all discharges pursuant to section (a) Non- National Pollutant Discharge Elimination System (NPDES) and (c) Confined Animal Feeding Operations (CAFO) is 9% of the calculated fee; the surcharge for all discharges pursuant to section (b) NPDES is 18.5% of the calculated fee. The surcharge shall be applied to all permits prior to other surcharges prescribed herein.

(a) Non-NPDES fees: Annual fees for persons issued waste discharge requirement orders for discharges to land under the Waste Discharge Requirements[1] or surface waters not covered by a NPDES permit and Land Disposal[2] Programs, shall be based on the discharge's fee rating according to the following schedule, plus applicable surcharge(s), except as provided in subdivisions (a)(2) and c.

ANNUAL FEE SCHEDULE FOR DISCHARGES TO LAND			
Threat to Water Quality (TTWQ)	**Complexity (CPLX)**	**Regulatory Programs**	
		Waste Discharge Requirements[1]	**Land Disposal[2]**
1	A	$38,000	$26,000[3]
1	B	$24,000	$21,000
1	C	$12,950	$13,500
2	A	$8,650	$11,250
2	B	$5,200	$9,000
2	C	$3,900	$6,750
3	A	$3,380	$4,500
3	B	$1,800	$3,375
3	C	$800	$1,500

(a)(1) Threat to water quality TTWQ and complexity CPLX of the discharge is assigned by the Regional Board in accordance with the following definitions:

THREAT TO WATER QUALITY

[1] Waste Discharge Requirements (WDRs) are those discharges of waste to land that are regulated through waste discharge requirements issued pursuant to Water Code Section 13263 and that do not implement the requirements of Title 27 of the California Code of Regulations (CCR). Examples include, but are not limited to, wastewater treatment plants, erosion control projects, and septic tank systems.

[2] Land Disposal WDRs are those discharges of waste to land that are regulated through waste discharge requirements issued pursuant to Water Code Section 13263 and that implement the requirements of CCR Title 27. Examples include, but are not limited to both active and closed landfills and surface impoundments.

[3] A surcharge of $12,000 will be added for Class I Landfills. Class I landfills are those that, during the time they are, or were, in operation, are so classified by the RWQCB under 23 CCR Chapter 15, have WDRs that allow (or, for closed units, allowed) them to receive hazardous waste, and have a permit issued by the Department of Toxic Substance Control under 22 CCR Chapter 10, §66270.1 et seq.

Category "1" – Those discharges of waste that could cause the long-term loss of a designated beneficial use of the receiving water. Examples of long-term loss of a beneficial use include the loss of drinking water supply, the closure of an area used for water contact recreation, or the posting of an area used for spawning or growth of aquatic resources, including shellfish and migratory fish.

Category "2" – Those discharges of waste that could impair the designated beneficial uses of the receiving water, cause short-term violations of water quality objectives, cause secondary drinking water standards to be violated, or cause a nuisance.

Category "3" – Those discharges of waste that could degrade water quality without violating water quality objectives, or could cause a minor impairment of designated beneficial uses as compared with Category 1 and Category 2.

COMPLEXITY

Category "A" – Any discharge of toxic wastes, any small volume discharge containing toxic waste or having numerous discharge points or ground water monitoring, or any Class 1 waste management unit.

Category "B" – Any discharger not included above that has physical, chemical, or biological treatment systems (except for septic systems with subsurface disposal), or any Class 2 or Class 3 waste management units.

Category "C" – Any discharge for which waste discharge requirements have been prescribed pursuant to Section 13263 of the Water Code not included as a Category "A" or Category "B" as described above. Included would be discharges having no waste treatment systems or that must comply with best management practices, discharges having passive treatment and disposal systems, or dischargers having waste storage systems with land disposal.

(a)(2) Dredge and Fill Operation fees shall be assessed as follows, not to exceed $40,000, plus applicable surcharge(s)[4].

[4] When a single project includes multiple discharges within a single dredge and fill fee category, the fee for that category shall be assessed based on the total area, volume, or length of discharge (as applicable) of the multiple discharges. When a single project includes discharges that are assessed under multiple fee categories, the total fee shall be the sum of the fees assessed under each applicable fee category; however a $500 base fee, if required, shall be charged only once.

Type of Discharge	Fees
(i) Fill & Excavation[5] Discharges. Size of the area as expressed in hundredths of acres (0.01 acre) (436 square feet) rounded up.	$500 Base Price + (Discharge area in hundredths of an acre x $21.50)
(ii) Dredging Discharges Dredge volume expressed in Cubic Yards.	$500 Base Price + (Dredge volume in cubic yards x $0.08)
(iii) Channel and Shoreline Discharges Includes linear discharges to drainage features and shorelines, e.g., bank stabilization, revetment and channelization projects. (Note): The fee for channel and shoreline linear discharges will be assessed under the "Fill and Excavation" or "Channel and Shoreline" schedules, whichever results in the higher fee.	$500 Base Price + (Discharge length in feet x $5.00)
(iv) Discharges to Non-federal (e.g. "Isolated") Waters. Discharges to waters or portions of waterbodies not regulated as "waters of the United States", including waters determined to be "isolated" pursuant to the findings of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) 121 S. Ct. 675.	Double the applicable fee schedules except for (vi) restoration projects
(v) Low Impact Discharges. Projects may be classified as low impact discharges if they meet all of the following criteria: 1. The discharge size is less than all of the following: (a) for fill, 0.1 acre, and 200 linear feet, and (b) for dredging, 25 cubic yards. 2. The discharger demonstrates that:(a) all practicable measures will be taken to avoid impacts, (b) where unavoidable temporary impacts take place, waters and vegetation will be restored to pre-project conditions as quickly as practicable, and (c) where unavoidable permanent impacts take place, there will be no net loss of wetland, riparian area, or headwater functions, including onsite habitat, habitat connectivity, floodwater retention, and pollutant removal. 3. The discharge will not do any of the following: (a) directly or indirectly destabilize a bed of a receiving water, (b) contribute to significant cumulative effects, (c) cause pollution, contamination, or nuisance, (d) adversely affect candidate, threatened, or endangered species, (e) degrade water quality or beneficial uses, (f) be toxic, (g) include "hazardous" or "designated" material. 4. Discharge is to a waterbody regulated as "Waters of the United States".	$500 Flat fee.
(vi) Restoration Projects. Projects funded or sponsored by a government program with the primary purpose of restoring or enhancing the beneficial uses of water. This schedule does not apply to projects required under a regulatory mandate or to projects undertaken primarily for some other non-restorative purpose, e.g., land development.	$500 Flat fee
(vii) General Orders. Projects which are required to submit notification of a proposed discharge to the State and/or Regional Board as a condition of compliance with a general waste discharge requirement associated with permitting discharges authorized by a federal general permit or license, e.g., a U.S. Army Corps of Engineers nationwide permit.	$60 Flat Fee

(b) NPDES fees: Annual fees for persons issued permits for discharges to surface waters pursuant to the program, except confined animal feeding operations, shall be based on the following schedules.

(b)(1) Each public entity that owns and/or operates a storm water conveyance system, or part of such a system, that is subject to a NPDES permit for storm water discharges from a municipal separate storm sewer system (MS4) shall pay an annual fee according to the following schedule, plus applicable surcharge(s). The fee shall be based on the population of the public entity according to the most recently published United States Census. For public entities other than cities or counties, the population figure shall be the number of people using the entity's facilities on a daily basis. Flood control districts or other special districts named as co-permittees to MS4 permits and school districts, serving students between kindergarten and fourteenth grade, shall not pay an annual fee if the city or county within whose jurisdiction the district lies, pays an annual fee.

[5] "Excavation" refers to moving sediment or soil in shallow waters or under no-flow conditions where impacts to beneficial uses are best described by the area of the discharge. It typically is done for purposes other than navigation. Examples include trenching for utility lines, other earthwork preliminary to construction, removing sediment to increase channel capacity, and aggregate mining in fresh waters.

ANNUAL FEE SCHEDULE FOR AREAWIDE MUNICIPAL STORM WATER SEWER SYSTEM PERMITS AND CO-PERMITTEES	
Population equal to or greater than 250,000	$25,000
Population between 200,000 and 249,999	$21,875
Population between 150,000 and 199,999	$18,875
Population between 100,000 and 149,999	$15,625
Population between 75,000 and 99,999	$12,500
Population between 50,000 and 74,999	$9,375
Population between 25,000 and 49,999	$6,250
Population between 10,000 and 24,999	$3,750
Population between 1,000 and 9,999	$2,500
Less than 1,000 population	$1,250
Statewide Permit Holders	$100,000

(b)(2) Storm water discharges associated with industrial activities that are regulated by a general NPDES storm water permit, including those issued by a Regional Board, shall pay an annual fee of $700, plus applicable surcharge(s). An amount equal to the fee prescribed shall be submitted with the discharger's Notice of Intent (NOI) to be regulated under a general NPDES permit and will serve as the first annual fee. For the purposes of this section, an NOI is considered to be a report of waste discharge.

(b)(3) Storm water discharges associated with construction activities that are regulated by a general NPDES storm water permit other than those covered under (b)(4), including those issued by a Regional Board, shall pay an annual fee of $200 plus $20 per acre, to a maximum fee of $2,200, plus any applicable surcharge, based on the total acreage listed on the NOI. An amount equal to the fee prescribed shall be submitted with the discharger's NOI to be regulated under a general NPDES permit and will serve as the first annual fee. For the purposes of this section, an NOI is considered to be a report of waste discharge.

(b)(4) Storm water discharges associated with small linear underground and overhead construction projects, that include but are not limited to, any conveyance, pipe or pipeline for the distribution of any gaseous liquid (including water for domestic municipal services or wastewater), liquescent, or slurry substance; any cable line or wire for the transmission of electrical energy; and any cable line or wire for communications, that are regulated by a general NPDES storm water permit are subject to the following annual fees, plus applicable surcharge(s):

Tier 1 –$5,000 for each region in which activities subject to the permit are conducted, or
Tier 2 –A fee as prescribed by (b)(3), based on the area covered by the project.

(b)(5) All other NPDES permitted discharges with permitted flows of less than 100 million gallons per day (mgd) except as provided in (b)(6), (b)(7), (b)(8), (b)(9) and c, shall pay a fee according to the following formula:

Fee = $1,000 plus 3418 multiplied by the permitted flow, in mgd, to the maximum plus any applicable surcharge(s).

The maximum fee for NPDES permitted industrial discharges[6] is $35,000, plus any applicable surcharge(s). NPDES permitted industrial discharges with a Threat/complexity[7] rating of 1A, 1B or 1C are subject to a surcharge as follows:

Threat /Category 1C - $5,000
Threat /Category 1B - $10,000
Threat /Category 1A - $15,000

The maximum fee for NPDES permitted public wastewater treatment facilities is $50,000, plus applicable surcharge(s). Public wastewater treatment facilities with approved pretreatment programs are subject to a surcharge of $10,000. Agencies with multiple facilities under one approved pretreatment program shall pay a $10,000 surcharge per program.

(b)(6) All NPDES discharges with permitted flows of 100 mgd or greater shall pay a fee of $100,000, plus applicable surcharges. The fee shall be based on permitted effluent flow specified in the discharge permit, except as provided in (b)(7), (b)(8) and (b)(9). If there is no permitted effluent flow specified, the fee shall be based on the designed flow of the facility.

(b)(7) Flow for wet weather municipal facilities will be based on the previous five years actual daily average flow, as of the date the permit is issued. Wet weather municipal facilities are intermittently operated facilities that are designed specifically to handle flows during wet weather conditions, and otherwise operate at less than ten percent of their permitted flows due to seasonal or other considerations. The actual daily average flow is the average of all the daily flows during the previous five-year period. The calculation does not include days when discharge did not occur.

(b)(8)(A) Discharges associated with aquaculture activities that are regulated by an individual or general NPDES permit, including those issued by a Regional Board, shall pay a fee based on the categories listed in (b)(9), as determined by the Regional Board. An aquaculture activity (as defined in Chapter 40, Section 122.25(b) of the Code of Federal Regulations) is a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. The definition for purposes of this fee category includes fish hatcheries.

(B) Discharges associated with geothermal facilities, where water quality objectives are not likely to be exceeded or where beneficial uses are fully protected, that are regulated by an individual or general NPDES permit, including those issued by a Regional Board, shall pay a fee based on the categories listed in (b)(9), as determined by the Regional Board. A geothermal facility is an entity that utilizes, extracts, or produces energy from geothermal fluids for heating, generating power, or other beneficial uses, and discharges geothermal fluids to surface water.

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[6] NPDES permitted industrial discharger(s) means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D—Manufacturing" and such other classes of significant waste producers as, by regulation, the U.S. EPA Administrator deems appropriate. (33 USC Sec. 1362).

[7] Threat/complexity categories are listed on page 2 of this document titled "THREAT TO WATER QUALITY".

(C) De minimis discharges that are regulated by an individual or general NPDES permit, including those issued by a Regional Board, shall pay a fee based on the categories listed in (b)(9), as determined by the Regional Board. De minimis discharge activities include the following: evaporative condensate; swimming and landscape pool drainage; discharges from fire hydrant testing or flushing; discharges resulting from construction dewatering; discharges associated with supply well installation, development, test pumping, and purging; discharges resulting from the maintenance of uncontaminated water supply wells, pipelines, tanks, etc.; discharges resulting from hydrostatic testing of water supply vessels, pipelines, tanks, etc.; discharges resulting from the disinfection of water supply pipelines, tanks, reservoirs, etc.; discharges from water supply systems resulting from system failures, pressure releases, etc.; discharges of non-contact cooling water, not including steam/electric power plants; discharges resulting from diverted stream flows; water treatment plant discharges; and other similar types of wastes that have low pollutant concentrations and are not likely to cause or have a reasonable potential to cause or contribute to an adverse affect on the beneficial uses of receiving waters yet technically must be regulated under an NPDES permit.

(D) All other NPDES general permits.

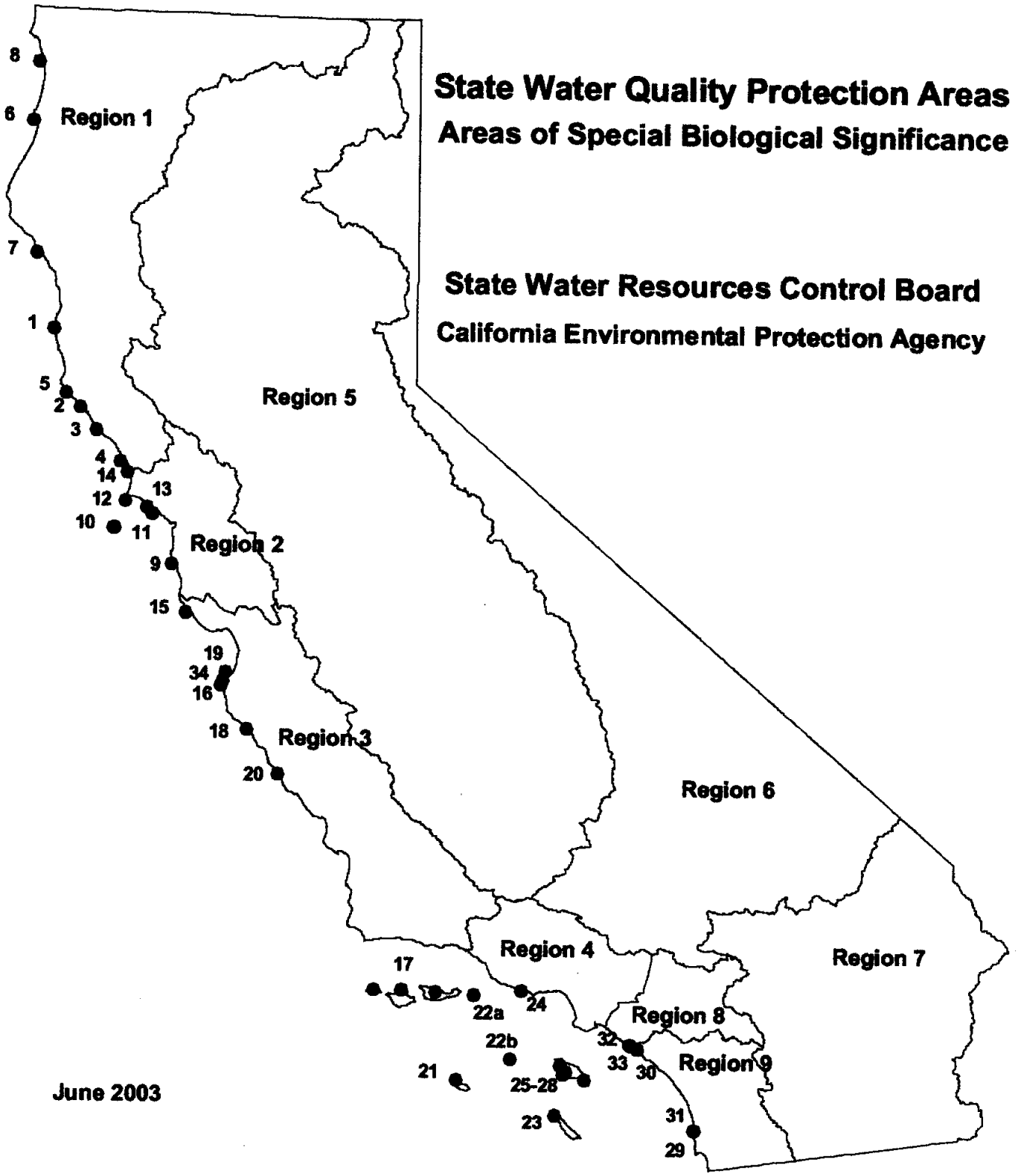
(b)(9) Discharges that fall within the categories specified in (b)(8) or that are regulated by a general NPDES permit (excluding storm water permits), shall pay a fee as follows, plus applicable surcharge(s):

Category 1 - Discharges that require treatment systems to meet priority toxic pollutant limits and that could impair beneficial uses if limits are violated: $4,800.
Category 2 - Discharges that require treatment systems to meet non-priority pollutant limits, but are not expected to impair beneficial uses if limits are violated: $2,900. (Examples of non-priority pollutants include, but are not limited to, nutrients, inorganic compounds, pH, and temperature).
Category 3 - Discharges that require minimal or no treatment systems to meet limits and pose no significant threat to water quality: $1,000.

(c) Confined Animal Feeding Operation fees: Whether regulated by an NPDES permit or a waste discharge requirement order, dischargers who own or operate Confined Animal Feedlots, including dairies, shall pay a fee based on the following schedules plus applicable surcharge(s).

(c)(1) Facilities that are certified under a quality assurance program approved by the State Board or under a County regulatory program approved by the appropriate Regional Board, will receive a 50 percent fee reduction.

(c)(2) Facilities that pose no potential to discharge, as determined by a Regional Board, shall pay a fee of $200. The fee shall be paid each time an application for initial certification or renewal is submitted and shall not be subject to ambient water monitoring surcharges.


State Water Quality Protection Areas
Areas of Special Biological Significance
State Water Resources Control Board
California Environmental Protection Agency
Region 1
Region 2
Region 3
Region 4
Region 5
Region 6
Region 7
Region 8
Region 9
8
6
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June 2003

ATTACHMENT
B-12a

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DI
- NOTICE OF PUBLIC WORKSHOP -

- **PRESENTATION OF SEDIMENT QUALITY ASSESSSMENT AND REMEDIATION TECHNICAL REPORT SUBMITTED BY NATIONAL STEEL AND SHIPBUILDING COMPANY (NASSCO) AND SOUTHWEST MARINE, INC. (SOUTHWEST MARINE)**

- **CLEANUP AND ABATEMENT ORDER SCOPING MEETING**

[redacted]

PUBLIC WORKSHOP

The California Regional Water Quality Control Board, San Diego Region (Regional Board) will hold a public workshop to present and receive comments on the marine sediment quality assessment and remediation technical report submitted by National Steel and Shipbuilding Company (NASSCO) and Southwest Marine, Inc. (Southwest Marine). This technical report will be used as a basis for the Regional Board's development of cleanup and abatement orders for NASSCO and Southwest Marine.

The Regional Board will also be conducting a scoping meeting at the workshop for interested and affected persons to communicate their views on the site assessment, data interpretation, sediment cleanup levels, sediment cleanup alternatives, extent of cleanup, cleanup costs, and other considerations that should be addressed by the Regional Board in preparing cleanup and abatement orders (CAOs) for NASSCO and Southwest Marine.

Date: Friday, November 14, 2003
Time: 9:00 a.m.
Location: Regional Board Office – Board Room
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Three or more Regional Board members may attend this workshop. Regional Board members will not be making any decisions.

Objectives for the Public Workshop: To present an overview of the technical report for the NASSCO and Southwest Marine shipyard sediment investigation, to provide an opportunity for the public to provide comments on the technical report, and to solicit input on the development of the CAOs.

Public participation is encouraged. The Regional Board will receive and consider comments from the public. Written comments may be submitted as described below.

BACKGROUND

Elevated levels of pollutants present in the marine sediments within and adjacent to the shipyard leaseholds. The concentrations of these pollutants cause or threaten to cause a condition of pollution that harms the beneficial uses designated for San Diego Bay. NASSCO and Southwest Marine have conducted a site-specific study to develop sediment cleanup levels and identify marine sediment cleanup alternatives.

The site-specific investigation included:

- Collecting sediment quality data at each shipyard. The data consists of bulk sediment and pore water chemistry, sediment and pore water toxicity, benthic community structure, and bioaccumulation.
- Assessing the nature and areal extent of sediment contamination resulting from current and historical waste discharges from the shipyards.
- Evaluating the biological effects and risks to San Diego Bay beneficial uses (aquatic life, aquatic-dependent wildlife, and human health) associated with sediment contamination at the shipyards.
- Evaluating cleanup levels protective of beneficial uses, including cleanup levels representing background conditions for NASSCO and Southwest Marine.
- Analyzing sediment remedial alternatives.

The technical report summarizing the results of the sediment investigation will be used as a basis for the Regional Board's development of CAOs for NASSCO and Southwest Marine.

AVAILABILITY OF TECHNICAL REPORT

To obtain a copy of the NASSCO and Southwest Marine technical report, contact Sylvia Wellnitz by:

U.S. mail: Regional Water Quality Control Board, 9174 Sky Park Court Suite 100, San Diego, California 92123-4340. Attention: Sylvia Wellnitz.

Email: wells@rb9.swrcb.ca.gov

Telephone: (858) 637-5593

The technical report can also be reviewed by appointment at the Regional Board office at the above address and can also be downloaded from the Regional Board's website at www.swrcb.ca.gov/rwqcb9/.

DEADLINE DATE FOR SUBMISSION OF WRITTEN COMMENTS

The Regional Board is accepting written comments on both the NASSCO and Southwest Marine technical report and scoping issues that should be considered by the Regional Board in preparing the CAOs for NASSCO and Southwest Marine. Written comments are due in the Regional Board office on December 5, 2003 by 5:00 p.m.

INFORMATION

Parking is available at the workshop location. A map with directions to the workshop may be obtained from the Regional Board's website or by contacting Ms. Lori Costa at the phone number below.

The workshop room facilities are accessible to persons with disabilities. Individuals who require special accommodations are requested to contact Ms. Lori Costa at (858) 467-2357 at least 5 working days prior to November 14, 2003. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

[Original Signed]

John H. Robertus
EXECUTIVE OFFICER

California Regional Water Quality Contro

ATTACHMENT B-12b

San Diego Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb9/
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972

Gray Davis
Governor

STAFF WORKSHOP AGENDA

- Presentation of NASSCO and Southwest Marine Technical Report
- Cleanup and Abatement Order Scoping Meeting

November 14, 2003 - 9:00 am to 4:30 pm
Regional Board Office – Board Room

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1. Introduction
   (Craig Carlisle, RWQCB) [9:00-9:15]

2. Background and Project Schedule
   (*Tom Alo, RWQCB)* – [9:15-9:40]

3. Overview of Cleanup and Abatement Orders
   (*Tom Alo, RWQCB*) – [9:40-10:00]

4. Presentation of Technical Report
   (Tom Ginn & Dreas Nielsen, Exponent)

   - Historical Site Conditions [10:00-10:15]
   - Sediment Chemistry [10:15-10:45]

   <**10-MIN BREAK**> [10:45-10:55]

   - Aquatic Life Risk Assessment [10:55-11:35]
   - Aquatic-Dependent Wildlife Risk Assessment [11:35-12:05]
   - Human Health Risk Assessment [12:05-12:35]

   <**BREAK FOR LUNCH**> [12:35-1:35]

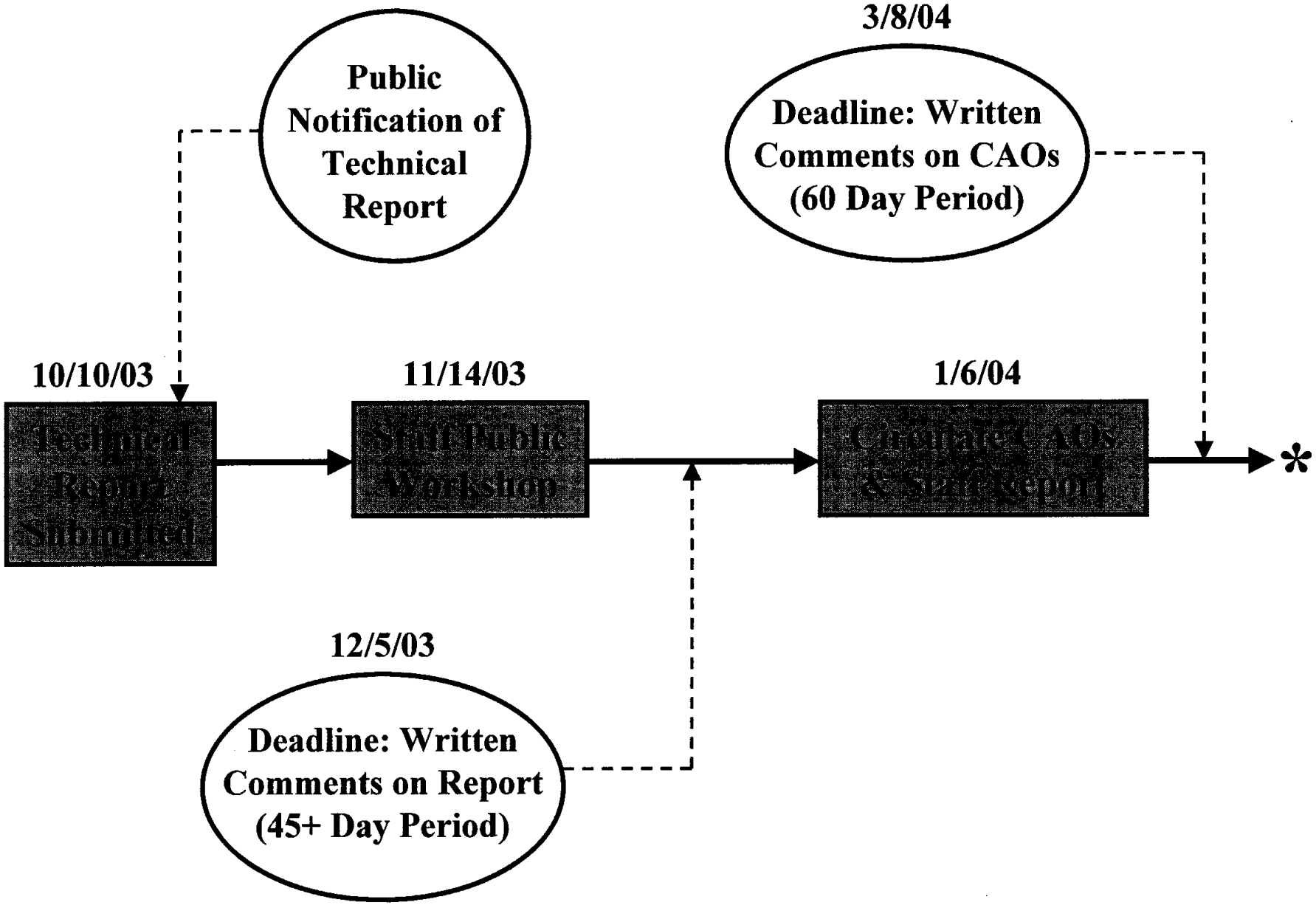
   - Integrated Assessment of Beneficial Uses [1:35-2:05]
   - Feasibility Study [2:05-3:05]

5. San Diego Bay Council Comments [3:05-3:35]

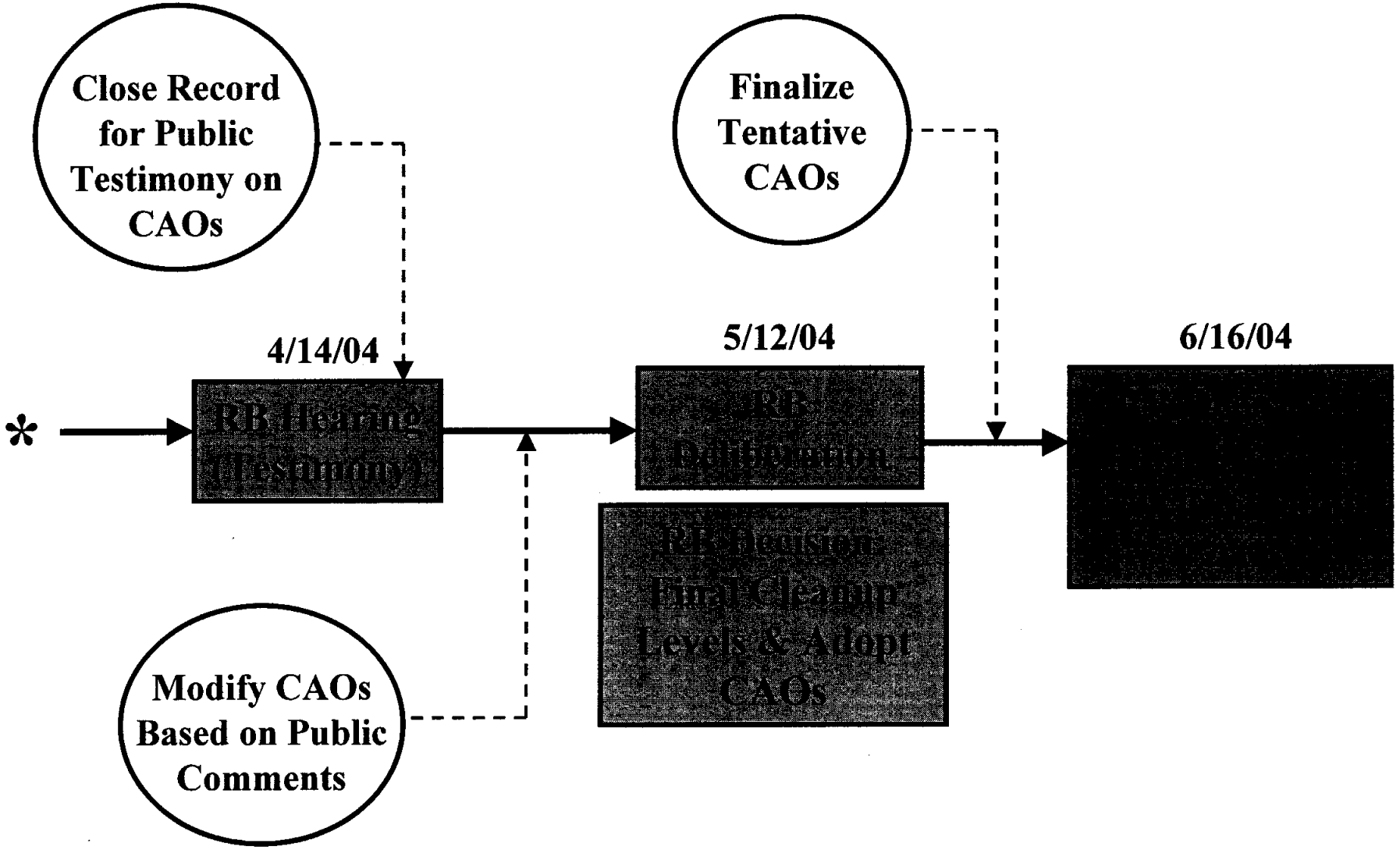
   <10-MIN BREAK> [3:35-3:45]

6. Comments from Other Interested Parties [3:45-4:30]

7. Closing
   (Craig Carlisle, RWQCB)



ATTACHMENT B-12c


Close Record for Public Testimony on CAOs
Finalize Tentative CAOs
4/14/04
5/12/04
6/16/04
*
RB Hearing (Testimony)
RB Deliberation
RB Decision: Final Cleanup Levels & Adopt CAOs
Modify CAOs Based on Public Comments

SIERRA CLUB
FOUNDED 1892

San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

ATTACHMENT B-14a

Conservation (619) 299-1741
Fax (619) 299-1742
Voice Info. (619) 299-1744
Email admin@sierraclubsandiego.org

State of California
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court
Suite Number 100
Attn.: Arthur Coe, Deputy Executive Officer
San Diego, CA 92123-4340

October 6, 2003

2003 OCT -9 A 12:59

Re: Request for Agendizing and Issuance of an Instruction to Staff to Study and Report in December 2003 to the Board as to the Recommendations stemming from Newly Acquired Information on the "Landfill " in the South Shores area of Mission Bay Park.

Dear Mr. Coe:

This letter is in response to a conversation you recently had with Professor Robert Simmons. It is my intention to have this document placed in the Director's reading file.

We believe there have been several significant violations of the Clean Water Act, within the Board's jurisdiction, at the South Shores of Mission Bay Park during the period from the date the Board was formed to the present.

We have recently obtained aerial photographs from the San Diego Historical Society and the Fairchild Aerial Photographic Collection that illustrate that the entire South Shores is polluted due to (1) dumping throughout the area from 1935 to 1963, (2) intentional flooding of the South Shores area by the city of San Diego in 1957 and 1961, and (3) piping and pumping of sewage from the Point Loma treatment plant .

We now know from aerial photos and personal interviews that what we have been calling retention ponds are actually sewage impound pits. The city piped and deposited a hazardous substance, sewage, into South Shores, extending from

Ingraham Street to Highway I-5. Therefore, when the sewage was blended with the toxic wastes dumped in South Shores by the Federal Government, military contractors, and other industrialists, it had the effect of making the entire area a hazardous waste site.

In additional to the newly discovered photographic evidence that the area traditionally described as outside the "landfill" is contaminated, we have recently interviewed a former city employee who was a supervisor of the South Shores dump site. In his conversations, our source confirmed our worse fears and proffered new information concerning the dumping of large quantities of sewage and also heavy metals (copper, among others) by the U.S. Navy under the first (1963) Sea World construction site and eastward.

Note: As we do not have a license to distribute our photographs, it will be necessary to present them to the staff and answer any questions in person. Once a point of contact has been identified to us, we will telephone for an appointment to review our photographs. We have provided herein as an attachment, information provided to the California Coastal Commissioners in September 2003.

In our letter to your staff on May 29, 2003, we regrettably requested a reclassification of the "Landfill" to Class 1. We now understand the inappropriateness of request. As the use of the term "landfill" was merely a "title of convenience" and a legal fiction, that entity is not eligible for classification. Therefore Water Board order 97-11, versions 1,2, and 3 incorrectly "classified" this site as a class II and class III. Under State code, the correct title of the entity at South Shores is "dump" or more accurately, "a dump site containing hazardous material." As such, the dump cannot be closed; it was never open. It can not be classified; it did not exist for classification purposes. The site was never permitted and therefore it cannot be considered a landfill for closure purposes! We argue that the city used this ruse for decades to deceive the Board and to evade regulation, scrutiny, and accountability. We seek to strip away this fantasy, to call the dump by its correct legal name, and to begin a study, remediating, and reuse of the area.

We note that in his book, entitled " San Diego 1927-1955: Recollections of a City Planner", Mr. Glenn Rick, pg. 146, under "Odds and ends", writes in his only reference to dumps: "City dumps were scattered indiscriminately around the city without permits in any convenient canyon. I remember making a list of them and mapping their locations. Eventually some control was established." We find these reminiscences highly instructive regarding South Shores.

We urge the Board and staff to give this grave matter the highest priority. A threat to human, avian, and marine life exists as South Shores is neither lined nor remediated. The minimal neoprene barrier around the boat cove in South Shores is totally unserviceable and physically incapable of providing a barrier between the bay water and the surface leaching of the dump site.

Absent issuance by the Board of a Cease and Desist Order, we urge the Board to Order the city to accelerate its current $600,000.00 study. The city must ascertain the now-expanded boundaries of the dump and test and analyse the soil and water in accordance with the Porter Cologne Act and the Clean Water Act. The city needs to define how much and what type of pollutants are leaching into the Bay from South Shores.

I will attend the November Board meeting to speak during the public comment period. I will update those present on developments in the interim and urge the Board to instruct staff to make a review of these findings and to make a recommendation to the Board in December.

Cordially,

John E. Wilks, III
Mission Bay Parks Spokesperson
and Member, Chapter Executive Committee

Enclosures:
1. Letter to Board, ~~01/05/03~~ 5/29/03
2. California Earth Corps Packet of Information (As provided the CA Coastal Com.)

CC:
SC SD (Chapter Chair, R. Miller)
Prof. R. Simmons, Chapter Executive Board Member.
Don May, President, California Earth Corps

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San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

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State of California
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court
Suite Number 100
Attn.: Brian K. McDaniel
San Diego, CA 92123-4340

May 29, 2003

Re: Correction of the Public Record--Reversion of the Classification of the Mission Bay Landfill to Class I.

Dear Mr. McDaniel:

Thank you for the two hours you spent with Professor Simmons and me in your conference room Wednesday. We appreciated the opportunity to meet with you to discuss the early period in the chronology of the classification of the Landfill, to explore the prospect of correcting the public record by reclassification from Class 2a to Class 1, and issuing a "Monitoring and Closure Order" for all Class 1 sites. Additionally, we appreciated your efforts at satisfying our request for document production. As a result of your professionalism and attention to detail, we believe we have a much clearer picture of the Landfill , the future of investigative tasks, and remedial measures.

So that we can complete the narrative record, I have prepared a synoptic of the documents we reviewed.

1. Eleven months prior to the closure of the Mission Bay Landfill, the firm of Omar Rendering Company wrote to the County Board of Supervisors requesting an ordinance be enacted which spoke to the requirement for transporting industrial wastes, particularly acids, on the city streets, country roads, and public highways. The source of the acids was "various Aircraft Plants and the small by-Product(sic) Manufacturers connected with them." The destination of the acids was "mainly the cut and fill dump at Mission Beach." (Refer to enclosure#1a).

The record reflects that in early 1959, the Mission Bay Landfall was closed, apparently without provision made for an alternative, regulated site for disposal for industrial wastes. Further, he added," A great number of the smaller manufacturers and platers are disposing of waste acids by way of the sewer. I understand that permission is granted to such manufacturers by the Sewage Dept. This action, no doubt, had been taken because of the lack of proper facilities for disposal." (Refer to enclosure 1b).

In response, the Omar Rendering Co. offered a new service for the County--it offered tank trucks and a place to dispose of the wastes. The author provided copies of his letter to the Water Pollution Control Board, San Diego Dept. of Sanitation, and the Dept. of Public Works.

The following day, in response to the Omar Rendering letter to the Supervisors, the County Public Health Engineer wrote a memorandum to the Director of Public Health. In paragraph three of that letter, the author states: "Meanwhile and up to the present, the city has been using the Mission Bay Sanitary fill for disposal of industrial wastes which were of excessive strength and which could not be disposed of, by permit, into the city sewers (disposal into sewers is regulated by the Industrial Waste Crdinance)."

Further, it is stated: "At the present time, the city plans to establish a new sanitary fill operation in San Clemente Canyon." Three days later, the Director of Public Health wrote to the Board of Supervisors, "It is true that we in San Diego had a problem in disposing of industrial wastes, participially acid wastes, and an attempt has been made to find an adequate industrial waste disposal area which way be used by all agencies needing such a disposal site." (Refer to enclosure 1c).

Apparently, an extensive study was authorized to investigate the appropriateness of using the new "Omar Rendering Company's Otay Valley Site" (File # 282.9) as a replacement for the Mission Bay Landfill site. The study was made (stemming from W.B. Resolution 59-R15). The Executive Officer of the San Diego Regional Water Pollution Control Board wrote to the District Engineer in Los Angeles that the Board may find the site or a contiguous site suitable for Class I materials in addition to the other classes. "The City of San Diego is anxious to terminate the Mission Bay sanitary fill operation within a matter of days, an action which will deprive the metropolitan area of its only presently operative Class I site." (Emphasis added). (Refer to Enclosure #1d).

Note: Currently, the Chapter believes that there were two horrible outcomes as a result of the urgent and unplanned for closure of the Mission Bay Toxic Dump on August 31, 1959. The pollution of the San Clemente Canyon from South Miramar and the subsequent effluent moving down the watershed into Mission Bay (State) Park through Rose Creek. Secondly, the establishment of SeaWorld in the immediate area of a Class I hazardous material waste disposal site.

The next problematic situation for the City of San Diego involved the leasing of the area directly over the largest portion of the sanitary landfill footprint. The city responded to a telephone call of May 11, 1981, and a media inquiry "that a local firm might have deposited toxic materials at the landfill during the mid-1950's." On May 13, 1981, the Deputy Director of the General Services/Solid Waste Division in a letter to the Water Quality Control Board, stated:

"As you might imagine, given the refuse disposal regulations of the time, our landfill records are limited prior to 1965. (Refer to enclosure 2). However, we have come up with some information that might be of assistance:

3. "The landfill accepted household and commercial refuse of the type currently accepted as Class II landfills. The site was never knowingly used for toxic waste disposal." (Emphasis added). (Refer to enclosure #2)

The City responded by contracting with the firm Woodward-Clyde Consultants to conduct a study of the area to verify the absence of hazardous materials. Woodward Clyde dug twenty-three test pits and found no hazardous material in its initial investigations. Later in 1983, the City leased fifty-five acres for the construction of the Ramada Renaissance Resort Hotel. The hotel deal was killed, after ground breaking, when Woodward Cylde retested and found Class I toxics.

On October 17, 1985, The San Diego Regional Water Quality Control Board adopted Order 85-78, "Water Discharge Requirements for the Site Closure of San Diego, Mission Bay Landfill, San Diego County." The effect of this Order was to require the city to conduct monitoring and to report the monitoring data to the Water Board. Apparently, The City did not take this mandate seriously, as it assigned the task a staff member in the economic development division and to a person with no training or experience in that technical subject. (Refer to enclosure #3).

We note that the Water Board Order mandated that the City must comply with the requirement contained in Chapter 15 which is pertinent to Toxic Waste Sites (Class 1). At this point in the history of Mission Bay Landfill, the County, the City and the Water Board seem to have reached a consensus that the site is a "Waste Management Unit, Class 1." (Refer to Enclosures #4 & 5).

For some inexplicable reason, the designation of the Landfill changed on April 9, 1997 with the issuance of Water Board Order No. 97-11. The title of the Order omitted the word "Hazardous" and all the sites listed in the annex, to include the Mission Bay Landfill, were listed as Class IIa sites--Non-Hazardous. Order 97-11 addendum's Nos. 1,2,& 3 continue to reflect this misclassification. In April 2003, at the recommendation of the San Diego City Council's Committee on the Mission Bay Landfill (Technical Advisory Committee), the title was changed by addendum No.#3 to include the word "Hazardous."

We now strongly urge the Board to issue a new order or an amendment to the existing order which not only restores the original, correct classification of Class 1 to the Mission Bay Landfill, but also instructs the City to follow the Monitoring guidelines contained in Chapter 15, Div. 3, Title 23 ("Discharges of Hazardous Waste to Land") and not Title 27 CCR (non-hazardous).

Additionally, we urge the Board to revisit its failed attempt to issue Tentative Orders R9-2002-0316 & 0315, regarding bifurcating the listing of Class IIa sites, as appropriate. (Refer to enclosures 7 & 8). We believe we have entered into a new era of informed compliance, and that the Board must use outreach to educate the various parties to again volunteer regulatory compliance, or to use enforced compliance, whichever is ultimately necessary.

Lobbying by regulated parties should be resisted by the Water Board. Hearing input is one thing; insubordination and obstruction are another. We believe the parties have not appropriately respected the arduous mission and goals of the Board and rather have sought to frustrate the Board in the discharge of its fiduciary duties.

Cordially,

/S/

John E. Wilks, III
Member, TAC

Enclosures

Enclosures:
1. Letter, 01/12/59
2. Letter, 05/13/81
3. Notice, 10/17/85
4. Order No.. 85-78
5. Letter, 06/24/85
6. Notice , 09/16/85
7. TO R9-2002-0315 (1st page only)
8. TO R9-2002-0316 (1st page only).

CC:
CCC, (Attn.: Ellen Lirley)
DTSC, (Director)
SC SD (Chapter Chair, R. Miller)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 3 TO ORDER NO. 97-11

GENERAL WASTE DISCHARGE REQUIREMENTS FOR POST-CLOSURE MAINTENANCE OF INACTIVE NONHAZARDOUS WASTE LANDFILLS WITHIN THE SAN DIEGO REGION

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. On April 9, 1997, this Regional Board adopted Order No. 97-11, *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills within the San Diego Region.* Order No. 97-11 established landfill maintenance requirements and water quality monitoring for former landfills and burn sites that ceased operation prior to 1984.

2. Groundwater monitoring reports and pre-1984 historical data for landfills and burn sites covered under Order No. 97-11 indicate that wastes disposed into the facilities may have included significant quantities of wastes currently defined/characterized as "hazardous wastes", in addition to "designated", "nonhazardous" and or "inert" wastes.

3. The Regional Board has notified all dischargers and all known interested parties of its intent to add the term "hazardous" to the title of Order No. 97-11.

4. This action is exempt from the requirements of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Title 14, California Code of Regulations, Chapter 3, Section 15321.

5. The Regional Board, in a public meeting, heard and considered all comments pertaining to the proposed action.

IT IS HEREBY ORDERED,

1. Replace the title of Order No. 97-11 with the following: "**General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Wastes within the San Diego Region.**"

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on February 5, 2003.

Issued by:

JOHN H. ROBERTUS
Executive Officer

STAFF REPORT FOR ITEM NO. 6

ATTACHMENT NO. 4

TENTATIVE ADDENDUM NO. 3 TO ORDER 97-11:

GENERAL WASTE DISCHARGE REQUIREMENTS FOR POST-CLOSURE MAINTENANCE OF INACTIVE NONHAZARDOUS WASTE LANDFILLS IN THE SAN DIEGO REGION

BY

BRIAN MCDANIEL
ENGINEERING GEOLOGIST
LAND DISCHARGE UNIT

FEBRUARY 5, 2003

BACKGROUND

Waste management practices associated with the classification and disposal of solid wastes has evolved over many years in California. The more restrictive modern landfill construction requirements, waste classification, and waste disposal practices/ prohibitions have been only recently developed in response to legislative mandates. Pre-1984 municipal landfills received a variety of waste streams during their operational lives. These municipal waste streams included mixtures of municipal solid wastes, agricultural wastes and industrial wastes.

Older landfill sites may reasonably be expected to have more regularly received/accepted discharges of "hazardous wastes" than their modern counter parts. The Regional Board staff has found information indicating that some facilities, currently regulated under General Order 97-11, likely to have received regular discharges of hazardous waste during their operational lifetime. The Regional Board staff have identified specific documentation indicating that the following landfills have likely received regular past discharges resulting in significant volumes of hazardous wastes: include the Mission Bay Landfill, the Naval Air Station North Island - Golf Course Landfill, and the old Marine Corps Recruit Depot (MCRD) Landfill.

INFORMATION RELATING TO THE WASTE STREAMS DISPOSED INTO PRE-1984 MUNICIPAL LANDFILLS

This section summarizes specific information received from dischargers indicating that significant quantities/volumes of hazardous wastes have historically been disposed at the following facilities:

Mission Bay Landfill. In February 1957, the Regional Board received a copy of a letter report sent by the Convair Division of General Dynamics to the Department of Public Works. The letter from Convair provided a report of industrial waste disposal into the Mission Bay Landfill as follows:

Year of Disposal	Waste Type(s)	Description	Estimated Volume(s)
1956	Contaminated Process Solutions	Plants 1 and 2 generate caustic soda, chromic acids, dichromates, hydrofluoric, nitric, sulphuric, and hydrochloric acids, and cadmium cyanides.	20,000 gallons
1956	Other Liquid Wastes	Include contaminated oils from the machine shop, spent and rancid coolants from production milling operations and paint sludges and dirty lacquer thinners from pain shops. These materials are closely associated with water and sludge. Solid wastes include magnesium turnings and cake cyanide. [1]	121,000 gallons

NOTES:

1 = The report states that cyanide wastes were encased in concrete and dumped at sea under State supervision. In the past magnesium wastes have been buried. 5,000 pounds were disposed of in this manner in 1956.

The letter also states that the method of "all other solutions is hauling and dumping into the sanitary fill in the Mission Bay area." The report of industrial waste disposal estimated that Convair would generate annual volume of liquid industrial wastes of approximately 200,000 gallons for the years from 1957 to 1962. The waste stream was expected to contain 149,000 gallons of paint and oil wastes and 51,000 gallons of process solutions.

The findings of Regional Board Resolution No. 58-R15 indicate that Messrs. Joseph Feeney and William O'Donnell provided verbal testimony (on July 28, 1959) to notify the Regional Board of the need for waste discharge requirements for the proposed waste disposal operations at the former Omar Rendering Facility because of "... the imminent closing of the Mission Bay Sanitary Fill, the only Class I disposal area now in operation in metropolitan San Diego; ...."

Closure of Mission Bay Landfill:

On September 16, 1985, the Regional Board issued post-closure waste discharge requirements and monitoring requirements for the Mission Bay Landfill. According to the findings of Order 85-78 "The Site Closure of City of San Diego Mission Bay Landfill, San Diego County":

Finding No.	Order 85-78 : Finding
3	The discharger indicates that the Mission Bay Landfill was opened on July 24, 1952 and operated until December 7, 1959 as an unrestricted landfill, accepting as much as 25,000 cubic yards of municipal and public refuse monthly.
4	The disposal method utilized at Mission Bay Landfill consisted of ditches about 60 feet long by 15 feet deep, and as much as 5 to 10 feet below the water table. After placement of waste material in the trenches a cover of 3 to 4 feet was placed over the disposal area. The landfill ranges in thickness from approximately 7 feet to 20 feet.
5	Following the cessation of landfllling operations, 5 to 20 feet (+/-) of hydraulic fill, dredged from Mission Bay, was placed over the landfill and adjacent area by 1962. The site received an additional 76,000 cubic yards of hydraulic fill in 1980. In addition, several thousand cubic yards of clean fill soil were placed over the south central portion of the landfill. The current cover thickness over the landfill averages approximately 8 feet.
10	The City of San Diego has submitted the following technical reports that present the results of two studies of the Mission Bay Landfill site to assess the presence

	and extent of priority pollutants contamination in site [*sic*] to assess the presence and extent of priority pollutant contamination in and adjacent to the landfill: Science Applications, Incorporated, *A Characterization of the Extent of Priority Pollutant Contamination in Mission Bay*, October 1983. Woodward-Clyde Consultants, *Site Assessment Report, Mission Bay Landfill*, Project No. 53221S-0006, dated November 17, 1983.
11	The Woodward-Clyde Consultant Report noted in Finding 10 specifically evaluated the presence and concentration of priority and certain non-priority pollutants in approximately 200 landfill, soil, gas and water samples as well as in samples from locations adjacent to the landfill....
12	The Regional Board staff has reviewed the Woodward-Clyde Consultants and Science Applications, Incorporated reports noted in Finding No. 10 and considered the Woodward-Clyde Consultants findings noted in Finding No. 11 and concluded that there is not definitive evidence of waste constituents from the Mission Bay Landfill being detected in either Mission Bay or the San Diego River. However, staff has determined that the Mission Bay Landfill poses a potential threat of degradation to adjacent surface waters and that an ongoing detection monitoring program as provided by this Order is necessary at the site to determine if waste constituents from the landfill site are migrating to adjacent surface waters.

The Regional Board staff was unable to find any records indicating that waste discharge requirements had been issued for the Mission Bay Landfill during its operational life from 1952 to 1959. The fact that the discharger references the facility as an "unrestricted landfill" (see Finding No. 3 or Order 85-78, referenced above) suggests there were few if any restrictions upon the types of wastes that could have been discharged into the Mission Bay Landfill.

Naval Air Station North Island (NASNI), Golf Course Landfill.

According to a site investigation report (SWDIV, 1995) submitted to the Regional Board, the Golf Course Landfill (AKA Installation Restoration Program (I.R.) Site 5) was operated as a "cut –and-cover" sanitary landfill from the early 1940's until 1965. Wastes were periodically burned to reduce volume. The Golf Course Landfill was the only solid was disposal site on North Island after the closure of the Old Spanish Bight Landfill (AKA I.R. Site 2) in the early 1940's.... NAS North Island chemical wastes that were not discharged to the drain system or to the Chemical Waste Disposal Area (AKA I.R. Site 9), were disposed at the Golf Course Landfill. The Navy estimated that 1,000 to 2,000 tons of hazardous wastes were disposed at the site. Waste disposed at the site consisted of trash, sand blast grit, acids, oils, solvents, caustics, hydraulic fluid, contaminated solid wastes, and small cans of epoxy, resins, adhesive, paint, asbestos, and sludges. These wastes were disposed of with ordinary refuse and were not separated or segregated in the disposal area.

Old Marine Corps Recruiting Depot (MCRD) Landfill.

The Old MCRD Landfill has been owned by the U.S. Navy since 1923, the facility was operated by the U.S. Marine Corps from 1950 to 1971. As part of the Base Realignment and Closure (BRAC) process, the Navy transferred property ownership to the San Diego Unified Port District in 2001.

According to the Solid Waste Water Quality Assessment Test (SWDIV, 1991) submitted to the Regional Board, disposal operations at the MCRD disposal began by randomly discharging waste material along the northern edge of the salt marsh and gradually extended southward into the marshy area. This practice continued until 1960 when dredged material was being used to reclaim the salt marsh. East-west oriented trenches (approximately 8 ft by 50 feet by 12 feet) were excavated into the fill material, filled with wastes, then covered. It is estimated that approximately 5 million cubic yards of waste were discharged into the site.

The MCRD Landfill reportedly received dumpster wastes (refuse) from MCRD and some dumpster wastes from the Naval Training Center (NTC) during the middle years of operation. Prior to 1971, the Navy reports that hazardous wastes were regularly placed into the dumpsters. Other sources of hazardous wastes discharged into the Old MCRD Landfill are listed in the table below.

Source and Waste Type	**Operation**	**Estimated Annual Generation (*Total gals*)**	**Treatment or Disposal Practice**
Waste Lube Oil (Service Schools)	1943–1986	760 gallons *(32,680)*	Buried at MCRD refuse area; then taken off site or sewered.
Plating Wastewaters (Service Schools)	1955-1980	25 gallons *(625)*	Discharge to sanitary sewer 1955-1967, buried at MCRD refuse disposal area 1967-1975.
Paint wastes (Navy Public Works)	1923 –1986	50 gallons *(3,150)*	Placed in dumpsters.
Pesticide Containers	1940's – 1986	Unknown	Placed in dumpsters.
Waste pesticides	1940's – 1986	Unknown	Buried DDT at MCRD disposal area during 1960's and 1970's.
Contents of Transformers	?	Unknown	Transformers, including those containing PCBs, were drained at the MCRD refuse disposal area.
Hazardous wastes from NTC	?	Unknown	Disposal of wastes at MCRD included: methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), xylene, gasoline, and metal plating wastes. The estimated total for disposal of NTC liquid hazardous wastes is between 3,000 to 4,000 gallons.

DISCUSSION: Prior to the modern requirements that exist in the California Code of Regulations, State requirements regulating discharges of wastes to land were located in the California Administrative Code (CAC). By earliest available guidance documentation from the State Water Resources Control Board (Franks, 1972, "Waste Discharge Requirements for Nonsewerable Waste Disposal to Land", State Water Resources Control Board -SWRCB), "Class 1" facilities were allowed to accept Group 1, Group 2, and Group 3 wastes for disposal.

Group 1 wastes contained materials perceived (at the time) to be "hazardous" or "toxic" in nature and could be comprised of the following waste streams of "Industrial origin":

1. Brines from food processing, oil well production, water treatment, industrial processes, and geothermal plants.

2. Other toxic or hazardous fluids from industrial operations such as spent cleaning fluids, petroleum fractions, chemicals, acids, alkali's, phenols, and spent washing fluids.

3. Substances from which toxic materials can leach such as process ashes, chemical mixtures, and mine tailings.

The types of wastes discharged into the Mission Bay Landfill by operations at the Convair Division of General Dynamics are consistent with the description of "Group 1 wastes" given above. The waste classification cited above post-dates the operational life of the Mission Bay Landfill (1952 to 1959). It is possible that some of the terminology used to describe "wastes" and "waste disposal sites" was in common use earlier than the cited reference. The terminology used in the SWRCB guidance document is likely to be analogous or of similar to the meaning of the term "Class 1 site" used by Messrs. Joseph Feeney and William O'Donnell to describe the "current" (as of 1959) disposal practices used at Mission Bay Landfill.

The Regional Board has not historically regulated waste disposal practices by the U.S. Navy at Naval Air Station North Island or the Old MCRD Landfill. The only historical records of such activities available to the Regional Board staff are those reports submitted to the Regional Board as a participant in the Statewide Department of Defense (DoD) Program.

STAFF CONCLUSION: Based upon the information available to the Regional Board staff, it seems likely that at least several of the landfills (*e.g.*, the Mission Bay Landfill, NASNI Golf Course Landfill, and Old MCRD Landfill) received significant volumes of "hazardous wastes" as defined by modern regulatory criteria. The Regional Board staff recommends that the title of Order 97-11 be amended to include the terms hazardous and nonhazardous wastes.

REFERENCES CITED

Franks, A.L., 1972, "Waste Discharge Requirements for Nonsewerable Waste Disposal to Land: Disposal Site Design, Operation, and Closure Information", California State Water Resources Control Board, pp. 31-35, and Appendix I.

California Regional Water Quality Control Board – San Diego (RWQCB), 1985, "Order 85-78: Waste Discharge Requirements for the Site Closure of the City of San Diego Mission Bay Landfill, San Diego County", dated September 16, 1985.

Southwest Division Naval Facilities Engineering Command (SWDIV), 1995, "Final NAS North Island Site 5 – Golf Course Garbage Disposal Area Site Characterization Summary – Technical Memorandum CTO-0009", dated February 1995.

Southwest Division Naval Facilities Engineering Command (SWDIV), 1991, "Draft Solid Waste Water Quality Assessment Test and Site Inspection Work Plan, Marine Corps Recruit Depot (MCRD) Disposal Area", dated January 11, 1991.

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September 9, 2003

Supervisor Mike Reilly, Chairman
California Coastal Commission
Eureka, California

RE: THURSDAY, 10 a: California Earth Corps' Request and Petition For Revocation of Coastal Development Permit No. 6-01-129 (Sea World Adventure Park, Splash Down Ride ["RIDE"]).

Dear Chairman Reilly and Honorable Commissioners,

In response to Sea World's reply to California Earth Corps' ("CEC") request and petition for revocation of the above-reference permit, CEC hereby offers the following information and rebuttals. First and foremost, CEC herein offers irrefutable evidence that the RIDE is located on top of a hazardous waste dump. Injuries and death have resulted from high levels of H2S not far from the RIDE location. Next, CEC discusses the relevance and significance of the 2002 Soil Vapor Study and responds to key contentions made in the Coastal Commission Staff Report. Finally, CEC reiterates its request that the California Coastal Commission ("Commission") revoke the RIDE permit because the revocation request meets all of the requirements of the Coastal Act.

I. Sea World purposefully failed to disclose significant information about the dump to the Commission. This significant information was neither disclosed in the Sea World Master Plan LCP Amendment, nor for the RIDE permit application.

A) Sea World failed, and continues to fail, to comply with California Health and Safety Code §25220 et seq. (Building Moratorium within 2000 feet of a Hazardous Waste Site).

The California Health and Safety Code §§25220 et seq., requires a person to apply to the California Department of Toxic Substances Control ("DTSC"), prior to construction of buildings, for a determination as to whether the land should be designated a hazardous waste property or a "border zone property," if that person knows, or has probable cause to know, that disposal of hazardous waste has occurred on the property that person owns or leases. §25221.

Once an application is received by DTSC, it must determine whether the land should be designated as hazardous waste property or border zone property. §25221.1. A

determination results in either a hearing or a statement of "no known hazard." If the DTSC determines that a hearing is warranted, then a building moratorium is recommended by DTSC to the local land use authorities. §25221.1. In addition, the land then becomes subject to the requirements, restrictions, provisions, and liabilities contained in chapter 6.5 of Division 20 of the Health and Safety Code. §25230(a)(2). Finally, if after the requisite hearing is held, the land is determined a hazardous waste property, then any development that occurs on the site must obtain a specific variance approved in writing by the DTSC for the land use and land in question. §25232.

Clearly, neither Sea World (lessee) nor the City of San Diego (owner and lessor) has ever performed their respective legal obligations to apply to the DTSC under §25220 et seq., for the Sea World leasehold property. As such, both are in violation of State law. Even though the City of San Diego was aware at the time it submitted the LCP Amendment to the Coastal Commission that it was out of compliance with State law because it knew that hazardous waste had been disposed of at, or within 2000 feet of, the Master Plan site, it failed to raise this issue with the Commission at any time.

Similarly, although Sea World knew the Master Plan area contained hazardous materials, it has refused to comply with the legal mandates of §25220.

Sea World knew that the site of the LCP Amendment, and the RIDE in particular, overlay an old, hazardous, toxic waste dump. *Yet Sea World withheld this key fact from the Commission.*

B) Sea World's knowledge of the true extent of the hazardous waste dump boundaries is established by the following facts:

1) Phase I and Phase II reports, required for acquisition of the Sea World property, would have disclosed that the site had been the recipient of hazardous waste during the 1950's. These reports wouldn't necessarily have been part of the public record, and apparently they were not, as no Phase I and Phase II reports have ever been found in any agency files. However, Sea World as the buyer/long-term lessee, would have had possession of these reports. Despite the fact these reports were not previously disclosed within the public domain, Sea World was nevertheless legally required to disclose the relevant information within these reports both to the City and to the Commission when applying for land use entitlements.
2) Photos of trenches dug for the RIDE development clearly indicate dump materials on the RIDE site. (See Don May letter 9/8/03, attached).
3) Sea World had access to the photographs that are described and discussed in both Don May's letter and Targhee, Inc.'s letter (both letters, dated 9/8/03, attached).
4) Interestingly, and contrary to standard practice, Sea World consistently avoided having its core samples for its various projects chemically analyzed. These various projects include the Wild Arctic Ride and the Parking Lot

expansion. This deviation from standard practice is further evidence that Sea World knew that the dump extended under the Master Plan area.

II. The 2002 Soil Vapor Study For an Adjacent 16-acre Tract

Despite the City's conclusion, which is accepted by Commission Staff Report, that no high concentrations of H2S were found at the ground surface, it is not apparent that any testing was actually conducted at the surface of any of the wells, including the J-24 well where 1820 ppm of H2S was found at 15 feet below the surface. The 2002 Soil Vapor Study states, "while concentration of the hydrogen sulfide probe J-24d was above health and safety limits the concentration in the air above a landfill site is typically 2 to 3 orders of magnitude less, as the soil vapor dissipates into the atmosphere." (Page 4-3). It is clear from this statement, and from the datasets provided in addenda to the 2002 Soil Vapor Study, that, contrary to the Staff Report's assertion, the Study's authors did not sample the surface of the wells. Furthermore, at "2 orders of magnitude less," the H2S surface gas at the J-24 well would still be considered lethal. In addition, a look at Table 2 shows that shallow tests (taken at 5 foot depths) in various wells contained a distinguished sulfur odor, indicating the presence of H2S gas throughout the Study area.

The 2002 Soil Vapor Study makes clear that the Study is relevant to the RIDE permit. For example, the Study states, "Enclosed structures such as enclosed buildings... that are constructed within 1,000 feet of a landfill boundary may require periodic methane monitoring or continuous methane monitoring (e.g., a methane detector and alarm)." (page 4-4). The RIDE is located less than 1,000 feet from the presumed dump boundary. Many enclosed buildings were approved as part of the RIDE permit. Thus, the 2002 Soil Vapor Study, by its very terms, is relevant to the RIDE permit. In addition, the Study states, "If the landfill [sic] and surrounding land is paved with materials that are impermeable to landfill gas, then there is a potential to increase the effective seal of the ground surface. This could result in increased concentrations of landfill gas accumulating within soil vapor." (Page 4-4). The dump and surrounding land, including the RIDE site, is, in part, paved with impermeable materials. Thus, there is a potential that increased concentrations of landfill gas will accumulate within soil vapor. This soil vapor will move and a sudden, acutely toxic release could result within the RIDE location. Finally, the 2002 Soil Vapor Study concludes, "caution and monitoring should still be applied at this location." (page 4-4).

The Commission Staff Report acknowledges that the 2002 Soil Vapor Study was not included, considered, or analyzed as part of the Master Plan EIR or the Master Plan LCP, nor was it disclosed to the Commission during the RIDE permit process. Despite the fact that Commission staff did not specifically request of Sea World to submit any additional information that might be relevant to the relocated RIDE site, Sea World was nevertheless responsible for ensuring that the revised RIDE application included all material and significant information. The Commission had no reason to believe that any new or existing information had been withheld from it in connection with the first RIDE permit application. The fact the Commission did not specifically request additional

information that it did not know existed, does not relieve Sea World of its legal duties to provide all relevant, significant information to the Commission regarding the RIDE.

Sea World knew full well that the 2002 Soil Vapor Study was relevant to the RIDE site, yet it chose to withhold this information to Commission. That Study recommended that soil gas mitigation and monitoring take place in all development within 1000 feet of the presumed boundary of the dump. The RIDE is only 315 feet from the presumed boundary of the dump, and therefore, all development proposed as part of the RIDE application required mitigation and monitoring. It is impossible for Sea World to suggest that the 2002 Soil Vapor Study was not relevant to the RIDE when the very conclusions of that study directly implicated the RIDE development.

III. Specific Responses to Commission Staff Report

CEC respectfully disagrees with, and hereby responds to, the following contentions contained in the Staff Report. This list is not inclusive:

A) "[The LEA and RWQCB] are the two public regulatory agencies charged with oversight of the landfill/toxic dump." (p. 6).

CEC Response:

- Health and Safety Code §25220 requires that hazardous waste sites are within the purview of DTSC. However, since Sea World and the City are in violation of §25220, DTSC's authority has not yet been invoked.

B) "although the Commission and its staff were unaware of the 2002 Soil Vapor Study at the time the Commission approved the subject permit, it does not contain relevant information, since the report does not directly address the relocated site of the splash down ride." (p. 6)

CEC Response:

- that the 2002 Soil Vapor Study does not directly address the relocated site of the RIDE certainly does not establish that the Study is not relevant to the RIDE permit application, or contain relevant information thereto. As CEC pointed out in its initial Petition and Request for Revocation, the Study is substantially relevant in that it identifies toxic gases in close proximity to the RIDE location. CEC pointed out that the location where the H2S-related injuries and death occurred is actually farther away from the 1820 ppm H2S reading than the RIDE location. In other words, the RIDE location is closer to the H2S test well than the location where the injuries and death occurred. In addition, as pointed out above, the 2002 Soil Vapor Study stated that mitigation and monitoring must be implemented in developments within 1000 feet of the study area. The RIDE development is within 315 feet of the study area. This information is hardly irrelevant to the Commission's consideration of the RIDE permit.

C) "CEC contends that the [2002 Soil Vapor Study] was pivotal in the Commission's action to deny [the May, 2003 Parking Lot application]." (p. 6).

CEC Response:

- CEC did *not* assert that the 2002 Soil Vapor Study was pivotal in the Commission's action to deny the Parking Lot application. CEC asserted that the *existence and role of the TAC and its ongoing investigation* was pivotal in the Commission's action to deny the Parking Lot application. CEC contends that had the Commission been informed about the existence and role of the TAC when it considered the RIDE application, the Commission would have similarly denied, or, at the very least, relocated or conditioned, the RIDE. With regard to the 2002 Soil Vapor Study and its potential role in the Commission's decision, CEC contends in its Petition and Request for Revocation that if the Commission had the information contained in the 2002 Soil Vapor Study, its decision about the RIDE permit would have been different. For example, the Commission may have relocated the RIDE, or added conditions of approval.

D) "The subject permit for the splash down ride is in a location not over the mapped landfill/toxic dump boundaries..." (p. 7).

CEC Response:

- The Ride *is* located over the dump. CEC has stated, and the City has acknowledged, that the map given to the Commission depicting the boundaries of the dump is not accurate. The RWQCB states, "there is a significant level of uncertainty regarding the exact boundaries of the past waste disposal operations..." (Letter from RWQCB to Ellen Lirley, Coastal Commission, August 18, 2003). In addition, CEC has established unequivocally that the map is inaccurate. (See Don May letter and Targhee, Inc., letter, attached).

E) DTSC previously evaluated the [RIDE] site and determined that the site did not pose a significant threat. (p. 8).

CEC Response:

- the Staff Report states that a DTSC letter supporting the above conclusion is attached to the Staff Report as an exhibit. CEC found only one letter from DTSC in the Staff Report. In that letter, dated July 24, 2000, DTSC states that it conducted a Preliminary Assessment of the Ramada Inn site, and determined that it did not pose a significant threat. Despite this determination, two workers were subsequently injured during construction of the Ramada Inn from H2S exposure. Ramada then abandoned its development plans for the site and the Inn was never built.
- The Ramada Inn site is in a totally different location than that of the RIDE. As far as CEC is aware, DTSC has never evaluated the RIDE site

nor has DTSC ever determined that it did not pose a significant threat. The record does not suggest otherwise.

F) The City of San Diego continues to monitor the site in accordance with RWQCB Order #97-11, General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills. (p. 8).

CEC Response:

- The correct and actual name of this Order number is: "General Waste Discharge Requirements for Post-Closure Maintenance of Inactive **Hazardous and** Nonhazardous Waste Landfills." (emphasis added).

G) while the City has indicated the exact limits of the landfill have not been defined, numerous soil borings have been made in around the landfill, providing a basis for some understanding of the limits of trash. As part of the geotechnical investigation for the Ride, eight soil borings were within the project site and no trash was encountered.

CEC Response:

- "trash" is not the issue here. The issue is hazardous waste. The dump received both municipal waste (trash) and industrial waste (liquids and drums). It is highly unlikely that these two types of wastes were commingled throughout the entire expanse of the dumping ground. It does not follow that because the soil borings did not encounter trash that the project site is not located over the hazardous waste dump.

IV. Had Sea World disclosed the relevant and significant information described herein, the Coastal Commission would have denied the RIDE permit, relocated the RIDE, or conditioned approval of the RIDE.

Just as it did with Sea World's Parking Lot permit application in May of 2003, the Commissioners would have denied, relocated, or conditioned the RIDE had it known the RIDE location is located over a dump where hazardous wastes were disposed. The Commission's own Staff Report inferentially supports this conclusion: it states that the 2002 Soil Vapor Study tested an area that was for "improvements directly over the landfill [sic]... but that the subject permit for the splash down ride is in a location not over the toxic dump boundaries." (p. 7). But, as explained above, subsequent information (not addressed in the Staff Report) unequivocally establishes that the RIDE is in fact located over the hazardous waste dump. Furthermore, had Sea World produced a Soil Vapor Study for the RIDE location, (as it did for the adjacent 16-acre tract), presumably the test results would have been similar to that of the 2002 Soil Vapor Study of the adjacent 16-acre tract, since the RIDE is also located over the hazardous waste dump. Finally, information regarding the H2S-prompted injuries and death at a location which is *farther away from the 2002 Soil Vapor Study area than that of the RIDE site* would have caused enough concern that the Commission, at the very least, would have

CALIFORNIA EARTH CORPS
4927 Minturn Avenue
Lakewood, CA 90712
(562) 630-1491

September 8, 2003

Peter Douglas, Executive Director,
California Coastal Commission
54 Mission Street, Suite 2000
San Francisco, CA 94105

Re: Sea World Splash Down Permit Revocation
Item 10h, Thursday, September 11, 2003

Dear Director Douglas and Coastal Commissioners:

Shortly after the Denial on May 7, 2003 of a Coastal Permit for the expansion of the Sea World parking lot because it "partially" overlaid an old dump site, California Earth Corps uncovered reports and studies documenting pockets of very high concentrations of hydrogen sulfide H2S and other hazardous gases under the existing Sea World parking lot in the near vicinity of the Splash Down ride now in early construction (IT report, Exhibit #1, and Declaration of Paul Rosenfeld, Exhibit #2).

We quickly found three prior incidents of public exposure: #1, at the Ramada Inn site during sampling of vadose gas in 1984, which documented methane & high levels of H2S in all samples; #2, in 1985 when trenching led to hazardous release, worker exposure and abandonment of a fully permitted hotel, and, #3, in 1989, when trenching for the South Shore boat launching ramp released methane carrying lethal levels of H2S overwhelmed and hospitalized eight workers, one of whom died. The City of San Diego paid the wrongful death suit. We fear further exposures are imminent.

On May 27, I attended a citizen's Technical Advisory Committee meeting convened by Councilmember Donna Frye to investigate the extent of the unregulated dump site. A topographical map overlaid on a recent aerial photograph (Exhibit #3) was displayed showing the probable location of where highly toxic materials had been dumped. It clearly shows the elevations of several complete (and other partial) retention basins overlying the toxic dump, extending the limits of toxic contamination under the site of the Splash Down ride.

Following the TAC meeting, I accompanied TAC member Scott Andrews to the Splash Down site. Conversations with workers found no air monitors air packs, safety equipment or worker warnings on site. We did find and photograph the open trench along the northern limit of the site, adjacent to the Wild Arctic ride (Exhibit #4). It clearly shows two inches of "chip-seal paving surface" (Staff Report, pg.7), over ~ 4 inches of decomposed granite base (DG) covering at least six feet (trench depth) of very homogeneous, dark, high organic clayey fill. Along the entire length, there are no shells, sands or gravels such as found in dredged sediments, nor the rubble and refuse typical of a municipal landfill. This appeared to be a hydraulic dump site. We then sought aerial photographs for confirmation.

IT'S A DUMP

Examination of aerial photographs from the San Diego Historical Society from 1949 to December 7, 1959 (Rosell photos) unambiguously document the uncontrolled and unregulated dumping of hazardous and non hazardous materials from the west end all the way east to Pitts' field with most of the activity within the area designated on the TAC map (Exhibit #5) and Rosell 82:13673-1352. This is consistent with the letters from Convair and Ryan and other file documents describing rolling barrels of solvents such as carbon tetrachloride, benzene, toluene & TCE, along with etchant and chemical milling acids including RFN, chrome sulfuric and hydrofluoric acids, lead based paints and materials now classified as Priority I carcinogens, into trenches below sea level. Those that did not sink, according to one memo, were pierced by bulldozer blades; that is, until the treads became so corroded as to become unusable. After that, other means were used to vent the barrels. Rosell 82:13673-1352 clearly shows the trenches and dump activity. But just to be sure, we asked Targhee, Inc., foremost in the field of toxic dump remediation for an independent evaluation using separate data. Their conclusion:

IT'S ALL A TOXIC DUMP SITE

In 1957, the City of San Diego constructed berms to form retention basins and flooded them with what appears to be sewage sludge, as shown by the profiles on TAC map (Exh.3) and Rosell 82:13673-1434 to 1439 to cover the now illegal disposal of the toxicants identified in the Ryan and Convair letters. This had the effect of dispersing the toxicants throughout the retention ponds, as shown in Rosell 82:13673-1449. Dumping continued as shown in Rosell 82:13673 (11/09/59) until halted December 7, 1959. The entire area was flooded again in 1961 with the hydraulic fill described in the core reports and anecdotal file memos and is seen overtopping the retention ponds in Rosell 82:13673-1801 on 02/05/61 and drying out in Rosell 82:13673-1875 on December 30, 1961. This would again redistribute the toxicants from the probable limits of the toxic dump site shown in TAC Map (Exh.3) throughout the entire Sea World Master Plan area shown in the TAC Map (Bauer letter, Exhibit #5). Only the concentrations of specific toxicants at specific locations is in question (Bauer, ibid). Sea World did not request chemical analyses of the core samples taken for/in the parking Lot Expansion area: LE1 - LE6 or cores taken for the Splash Down (Lyon study) or for the Wild Arctic or prior rides, or for the Phase I and Phase II reports, even though it is standard procedure even for sites not known to be contaminated dumps. We wonder why not.

SEA WORLD WAS WELL AWARE THE SPLASH DOWN PROJECT AREA IS A DUMP SITE when they applied for a Coastal Permit. They must have been aware since that is the requirement for the Phase I and Phase II reports necessary for acquisition of the Sea World property. They must have been aware from the grading for all prior construction activities; they were aware from prior soils engineering studies, especially the Christian Wheeler Geotechnical Report and the Lyons Report for the adjacent Wild Arctic ride, they certainly were aware when the Sea World Master Plan, Article XXV D requiring Sea World to take care not to break the hydraulic fill cap preventing the escape of methane suspected of carrying H2S. They have had the historical aerial photographs documenting this far longer than we have.

SEA WORLD WAS AWARE THAT THEY COULD NOT GET A BUILDING PERMIT WITHIN 2000 FEET OF A HAZARDOUS WASTE DUMP. In a Letter to File on October 2, 1981 (Exhibit 6) Pete Michael of the State Water Resources Control Brd. acknowledges a meeting with City Manager Ray Blair and Jim Gutzmer, SD City Deputy Director, Solid Waste, to discuss the findings disclosed in the Convair Report of February, 1957 (Exhibit #7) and other documents disclosing hazardous materials and "powerful acids" dumped at Mission Bay site and to review "with Larry Froley, DOHS, Hazardous Waste Management, Santa Ana, to coordinate a study with the State under AB2370 (Building Moratorium within 2000 feet of a hazardous waste site)." The meeting may have been precipitated by the recently discovered 1957 Convair Report on dumping of acids and caustics at the old Mission Bay landfill. Sea World was aware of, and probably part of these meetings on the impact of the Felando Act on the ability to get pending permits for Ramada Inn and Sea World.

THE FELANDO ACT PROHIBITS THE CITY AND COASTAL COMMISSION FROM PERMITTING THE SPLASH DOWN RIDE without first completing a rigorous study (RIFS), public hearing and finding of noncontamination in a published Final Report by the State Department of Toxic Substance Control (DTSC). No such RIFS or Hearing or Final Report has been done by DTSC. The Felando Act is precautionary, requiring the assumption that the area within 2000 feet of a toxic dump is contaminated with those toxicants, and properly so. The Mission Bay dump site record of worker and public exposures, hospitalizations and death could have been avoided, had the City complied with the Act. Sea World and the City of San Diego knew this, as evidenced in the Michael Memo. Neither one disclosed this information to the Coastal Commission. This more than fully meets the criteria for Revocation of a Coastal Permit.

Even more importantly, every Consultant reviewing the vapor studies and gas monitoring data, both on the record, in the Record and verbally, has stated that these concentrations of H2S can be easily and quickly remediated, and that failure to immediately do so would pose an unacceptable risk to workers and members of the Public. Many have been exposed, sickened and even died by agency and applicant failure to heed the recommendations of their consultants or requirements of AB2370.

THIS REQUIRES IMMEDIATE ACTION BEFORE SOMEONE ELSE IS KILLED. THE QUICKEST AND PERHAPS ONLY WAY IS TO REVOKE THE SPLASH DOWN RIDE PERMIT

If you have any question at all, or would like documentation of any portion of this testimony, please ask; we have brought it all along.

We fully understand the gravity of a Revocation Request. I was a part of that Legislative History that debated whether a Revocation should ever be considered, and just what circumstances could ever justify that action. We strongly believe that exactly these circumstances do justify this Revocation; that this is exactly the circumstance the Legislature had in mind when the provision was enacted.

We strongly believe that the toughest criteria, the highest standard must be required to prevent endless reconsideration of Permits. But when a Permit has been obtained by deliberately misleading Commission and Staff; when a Permit has been issued by intentionally and cavalierly withholding that vital information necessary to protect the health and safety of large numbers of the public, then, yes, we also strongly believe that Permit must be Revoked. In fact, we are depending on you to do so.

Sincerely,

Don May, President
California Earth Corps

TARGHEE, INC.
ENVIRONMENTAL CONSULTING

September 8, 2003

California Earth Corps.
c/o Don May
4927 Minturn Avenue
Lakewood, California 90712

Dear Mr. May:

I am David L. Bauer, President of Targhee, Inc., an environmental consulting firm. I have a B.S. Degree in chemistry. I am a California Registered Environmental Assessor II (REA II), a fellow in the American Institute of Chemists (I am also certified as a professional chemist by that group), and a Qualified Environmental Professional. I was involved in basic chemical research for eight years prior to engaging full time in environmental management. I have worked in environmental management now for 35 years.

My work often requires evaluation of aerial photographs. I learned this skill in 1957 and have reviewed thousands of aerial photos since. Among the aerial photos that I have reviewed in the last 30 years were photos of at least several hundred disposal sites. The subject of this document focuses on those skills and experience.

Targhee, Inc. obtained 1963 aerial photographs covering the Mission Bay Dump. I personally reviewed those photos. Qualified members of Targhee's staff also reviewed the Whittier College Fairchild Collection of aerial photographs on August 27, 2003. Seven photos were obtained for my subsequent review. These photos depict the area during the 1950s.

Based on the Targhee staff's and my personal review of the aerial photos, our preliminary findings indicate that disposal activities appeared to have begun on the southwestern section of the area prior to July 1953. The dumping area and activities appear to have increased to some extent in December 1953. Disposal activities increased and appear to have peaked in 1958. My personal review of the photos indicates a significantly larger disposal area than the area on the February 1999 aerial photo designated as the approximate landfill boundaries. It is apparent that a portion of Sea World is located on top of a part of the Mission Bay Dump (see attached 1963 photocopy which indicates the approximate hazardous waste dump boundary).

110 Pine Avenue, Suite 925 • Long Beach, CA 90802-4455 • (562) 435-8080 FAX (562) 590-8795
www.targheeinc.com

EXHIBIT 5

The June 9, 1997 Fluor Daniel GTI report done for Sea World includes some pertinent information that is useful in interpreting the photos.

Sec. 1.3 indicates the area was used as an unrestricted Class I Landfill from 1952 - 1959. (We assume the authors intended to indicate the area was used for unrestricted dumping of Class I waste as the site could in no way comply with siting regulations developed for Class I sites in the 1950s. The 1952-1959 disposal dates were reported to the city by Convair.)

Sec. 1.3 indicates from 1959 - 1962, 5 to 20 feet of hydraulic fill was placed over the "landfill". (There is no indication the site was ever operated as a landfill. It was operated as a dump.) The term ``landfill'' implies an engineered disposal area in which deposits are compacted and covered with six (6) inches of soil on a daily basis and when operations cease is covered with a two-foot thick, low permeability cap. (In addition, leachate, run on and run off controls are also incorporated into most landfill sites.)

Sec. 1.4 indicates the April 22, 1996 Phase I Environmetnal Site Assessment (ESA) included a review of photographic archives. The Phase II subsurface investigation referenced in this ESA report deals with an area located east of the site that is not at issue today. However, it does indicate that the consultant's staff did look at historical aerial photographs.

Sec. 2.4 From 1952 - 1959 the area received 25,000 cubic yards per month of municipal and commercial waste including chlorinated, oxygenated, aliphatic and aromatic solvents; mineral acids; and heavy metals.

As many as 130 drums of waste per month were dumped (wastes were also dumped by vacuum truck - letter January 12, 1959). It is assumed that all drums had leaked by 1969.

Sec. 6.1/6.2 indicates that materials were found in soil and groundwater consistent with the wastes known to have been disposed.

The delineation of the hazardous waste area is based largely on geophysical analysis, which depends on at least partially intact drums to define the area. Totally dissolved drums and liquids from vacuum trucks do not leave a signature detectable by the geophysical approach. Hence, the geophysical survey is useful, and the depicted boundary is not arbitrary, but it is certainly not definitive.

The photos we obtained in San Diego were secured in a few hours effort (*i.e.*, they are readily accessible). The Whittier Fairchild Collection is a standard reference used by professionals in the environmental and other fields.

The Fairchild photos reviewed were 1/3/41, 9/7/51, 12/20/51,7/53, 11/11/53, 12/5/53, 1958. The 1963 photo was from Continental. Other San Diego photos (obliques) were logged as 11/56, 12/7/57, 11/2/58, 11/9/59, 2/5/61, 12/30/61, 4/4/77.

Obliques (San Diego source):

11/56 The site is in active disposal. Ridges and rills in the area are prominent. The west side is disrupted.

12/7/57 A levee improvement (levee/road) north of the area has been developed. Most of the site and more importantly, all of the western area is inundated, not just the area inside the approximate ``landfill'' boundaries.

11/9/59 (two photos) The rows and rills are still apparent. The site is being filled by unknown material. This includes the area in question.

2/5/61 The levee has been breached, and the site is inundated. (At this point hazardous waste materials are spread throughout the entire area by the inundation. The only question left as to hazard is material mass and concentration, *i.e.*, migration is absolute.)

12/30/61 Area levee appears to be restored, but area is still inundated.

Fairchild Photos:

1953 Photos show the entire area disrupted with active dumping east, central and west.

1958 Major dump and spread activity. (This is not a sanitary landfill.)

Continental Photograph:

7/25/63 The site shows recent activity. The "hazardous" area is defined with low roads (levees) and remnants of roads. The area to the west is characterized by two east-west mounds near

the north boundary and the site center. There is a discrete circular mound at the north. There are several areas with mounds of truckload-size volume still in place in the area in question.

Erosion rills represent past winter rains, and no current truck or tractor paths are apparent, *i.e.*, the site is not recently active.

It is known that drums containing hazardous industrial wastes were discarded at the site and leaked these materials into the ground. It is also known that liquid wastes were delivered by vacuum truck and emptied onto the site. These liquids are highly mobile and would have moved with the inundation waters either as insoluble sediment, colloidal suspensions or water-soluble materials

What is clearly apparent is that the <u>entire</u> site has been used for dumping both liquid and solid wastes. Even if the only eastern area was used for hazardous waste disposal, due to inundation and frequent soil movement, the western area was subsequently contaminated.

All of the documents used for this review are readily available to any professional with an interest in the area. The "project area" is well within an area used for active disposal and in all probability is contaminated. No comprehensive review (physical or chemical) of the site in question has been done.

Very truly yours,
TARGHEE, INC.

David L. Bauer
President

DLB/jj

CONVAIR

A DIVISION OF GENERAL DYNAMICS CORPORATION

SEE SEPARATE DOCUMENT # 0173 37

37

SAN DIEGO 12, CALIFORNIA
TELEPHONE: CYPRESS 9-6011

18 February 1957

Dept. of Public Works
1970 B Street
San Diego 2, California

Attention: Mr. Jack H. Krans, Chemical Engineer

Subject: Report on Convair Industrial Waste Disposal

Dear Sir:

In a meeting, held recently in the office of the undersigned, a request was made for Convair to supply certain data pertaining to the existing volume of waste solution. If possible, they were to project this volume into the future as far as could be forecasted on a reasonable basis.

Attached are three (3) copies of our report complying with the above outlined request.

If this office can be of any further assistance in this matter, please feel free to call at any time.

Yours truly,

CONVAIR
A Division of General Dynamics Corporation
(San Diego)

V. Sharp
Asst. Chief Plant Engineer

VS:ds

cc: H. A. Smith
J. Freeman

EXHIBIT 7

REPORT ON INDUSTRIAL WASTE DISPOSAL

Process solutions employed at Plants 1 and 2, Convair, San Diego include caustic soda; chromic acids and dichromates; hydrofluoric, nitric, sulphuric, and hydrochloric acids, and cadmium cyanides.

These solutions become contaminated and must be replaced with fresh solution.

Other industrial wastes in liquid form include contaminated oils from the machine shop, spent and rancid coolants from production milling operations, and paint sludges and dirty lacquer thinners from paint shops. These materials are not salvable because they are closely associated with water and sludge. Solid wastes include magnesium turnings and cake cyanides.

In 1956 Convair disposed of 20,000 gallons of contaminated process solutions and 128,000 gallons of the other liquid wastes.

Cyanide wastes are encased in concrete and dumped at sea under State supervision.

In the past magnesium wastes have been buried. Five thousand pounds were disposed of in this manner in 1956.

The present method of disposal of all other solutions is hauling and dumping into the sanitary fill in the Mission Bay area. Solutions building over 500 gallons and which can be hauled in a steel tank are hauled by a contractor. Cost for hauling is $56.00 for a minimum 2000 gallon load. Solutions which attack steel are hauled in a company owned "sludge bucket". The capacity of this bucket must be limited to 250 gallons to avoid spillage enroute. Estimated company cost of disposal in this manner is $6.00 a trip. Total cost for this short haul in 1956, excluding shop labor, was $4000.00.

Although most of the acid and alkaline solutions are hauled untreated, one tank full was neutralized before hauling. This treatment took six hours and 800 pounds of caustic for 2500 gallons of solution. Estimated cost was $154.00.

It is estimated that the amount of the foregoing wastes will be 200,000 gallons per year for the next five years. Of this 149,000 gallons will be paint and oily wastes, and 51,000 gallons of the process solutions.

The following is a breakdown of the process solutions:

Solution	pH Range	Quantity Gallons	% of Total in Class
Alkali (caustic)	11 - 13	17,100	100
Acids:	All	33,900	-
Class I	1.0	14,500	-
Chromic		5,800	40
Hydrofluoric		3,480	24
Nitric		3,335	23
Sulphuric		1,015	7
Hydrochloric		870	6

Report on Industrial Waste Disposal - Continued

Solution	pH Range	Quantity Gallons	% of Total in Class
Class II	1.0 thru 2.0	16,500	—
Chromic		16,500	100
Class III	4.2	2,500	—
Sodium Dichromate		2,500	100

Submitted by: R. W. Winchester
#25-4 Plant Engineering Department

Approved by: R. E. Dennington
R. E. Dennington, Plant Engineer (Design)
#25-4 Plant Engineering Department

Approved by: W. E. Olle
W. E. Olle, Sr. Plant Engineer (Design)
#25-0 Plant Engineering Department

EWW/rh

Approved by: Joe Freedman
Joe Freedman,
#V-5 Material Reclamation Department

STATE WATER RESOURCES CONTROL BOARD

S079

ALC/10/2

INTERNAL MEMO

FILE

TO: DUMPSITES, MISCELLANEOUS COR FROM: P. W. MICHAEL

DATE: OCT 2, 1981 SIGNATURE:

SUBJECT: MISSION BAY LANDFILL / CONVAIR WASTE

JIM GUTZMER, CITY OF S.D. DEPUTY DIRECTOR, SOLID WASTE, CALLED WITH MORE INFORMATION ON TYPES OF MATERIALS RECEIVED AT THE MISSION BAY LANDFILL.

AFTER AN INTENSIVE SEARCH, JIM FOUND 4-5 FOLDERS COVERING LANDFILLS AND BURNING DUMPS FROM 1933-1960. ALL THE INFORMATION, EXCEPT ONE LETTER, INDICATED THAT ONLY HOUSEHOLD REFUSE WAS ACCEPTED AT THE MISSION BAY SITE. THE LETTER WAS FROM A DR. CHRISTIE. DATED AUGUST 3, 1959 AND WAS TAKEN FROM A FILE ON COMPLAINTS AGAINST DUMPSITES. DR. CHRISTIE WROTE TO THE COMMANDANT OF THE ELEVENTH NAVAL DISTRICT (POSSIBLY ABOUT LOCATING A NEW LANDFILL AT MIRAMAR) THAT THE MISSION BAY LANDFILL HAD RECEIVED "POWERFUL ACIDS."

JIM GUTZMER WILL MEET WITH CITY MANAGER RAY BLAIR MONDAY TO DISCUSS THESE FINDINGS. A STUDY WILL BE PROPOSED TO RESAMPLE THE LANDFILL FOR THOSE MATERIALS LISTED IN THE CONVAIR REPORT OF FEBRUARY 1957. GUTZMER WILL ALSO CONTACT LARRY FROLEY, DOHS, HAZARDOUS MATERIALS MANAGEMENT, SANTA ANA TO COORDINATE A STUDY WITH THE STATE UNDER AB 2370 (BUILDING MORATORIUM WITHIN 2000 FEET OF A HAZARDOUS WASTE SITE).

RCB 328(3-75)

EXHIBIT 6

STATE WATER RESOURCES CONTROL BOARD

dlc 11.2

INTERNAL MEMO

: Mission Bay Landfill

TO: FILE DUMPSITES ~~MISC. COE.~~ FROM: D. W. MICHAEL

DATE: OCT 2, 1981 SIGNATURE:

SUBJECT: MISSION BAY LANDFILL / CONVAIR

AL SKILES, HAZARDOUS WASTE MANAGER FOR CONVAIR, CALLED CONCERNING TESTING OF PAINT SLUDGE. HE MENTIONED THAT MARION BALSTER OF S.D. COUNTY HEALTH / DOHS WILL MEET WITH HIM ON TUESDAY TO DISCUSS CONVAIR WASTE HAULING PROCEDURES. THE MEETING MAY HAVE BEEN PRECIPITATED BY THE RECENTLY DISCOVERED 1957 CONAIR REPORT ON DUMPING OF ACIDS AND CAUSTICS AT THE OLD MISSION BAY LANDFILL.

SWAPE LLC
Soil Water Air Protection Enterprise
201 Wilshire Boulevard, Second Floor
Santa Monica California 90401

July 21, 2003

To: California Earth Corps
Don May
4927 Minturn Avenue
Lakewood, California 90712

Re: Hydrogen Sulfide and Methane at Mission Bay Landfill

Dear Mr. May:

My name is Paul Rosenfeld and I work for SWAPE LLC. I have a Ph.D. in Soil Chemistry from the University of Washington in Seattle, Washington. I am now an Adjunct Professor at the University of California, Los Angeles, teaching courses in Environmental Health Science. I have conducted human health risk assessments for various properties contaminated with a variety of contaminants including pesticides, polychlorinated biphenols, volatile organic compounds, semi-volatile organic compounds, and heavy metals. I have taught courses with the California Integrated Waste Management Board on alternative landfill cover design and I have worked at several different landfill facilities. I have also worked for the United States Navy Base Realignment and Closure (BRAC) Program and spent much of my time investigating contaminated buried material.

I have reviewed several articles discussing the contaminants at the Mission Bay Landfill and recognize that there are high methane and hydrogen sulfide concentrations in the subsurface soils that pose a threat to human health and the environment. The proposed ride "Voyage To Atlantis" also referred to as "Splash Down Thrill Ride" will be located very close to extremely high concentrations of hydrogen sulfide and methane that pose an immediate high risk to human health and the environment.

IT Corporation (2002) reported that vapor probe J-24 had a hydrogen sulfide concentration of 1820 ppmv. This location is approximately 315 feet away from the entrance of the proposed ride. On December 20 and 23, 1996 wells LE-1, LE-2 and LE-3 were drilled and installed in the lease expansion area. During the drilling LE-4, on December 23, hydrogen sulfide gas was detected at concentrations as high as 9 ppm and methane was detected at a maximum of 1,000 ppm (Flour Daniel GTI, 1997).

EXHIBIT 2

Corporation went on to recommend "If the landfill and surrounding land is paved with materials that are impermeable to landfill gas, then there is potential to increase the effective seal of ground surface. This could result in increased concentrations of landfill gas accumulating within soil vapor." Hence, landfill settling, an earthquake, or liquefaction will likely create a pathway resulting in a hydrogen sulfide vapor release that will threaten human health and the environment.

Respectfully,

Paul Rosenfeld

Paul Rosenfeld Ph.D.
SWAPE LLC

REFERENCES:

Christian Wheeler (2002) "Report of Preliminary Geotechnical Investigation, Sea World Atlantis Project San Diego California." May 31.

Flour Daniel GTI (1996) ": Assessment Report Sea World Lease Expansion 1720 South Shores Road, San Diego California," Project Number 023450021. June 9th.

NIOSH [1979]. Criteria for a recommended standard: working in confined spaces. Morgantown, WV: U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, National Institute for OccupationalSafety and Health, DHEW (NIOSH) Publication No. 80-106.

NIOSH [1985a]. NIOSH pocket guide to chemical hazards. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS [NIOSH] Publication No. 85-114.

NIOSH/OSHA [1981]. Occupational health guidelines for chemical hazards. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication.

IT Corporation (2002) Results of Soil Vapor Assessment Seaworld Expansion Plan, 16-Acre Tract. Project Number 830418.

ATTACHMENT
B-14b

Mission Bay Park Toxic Cleanup
P.O. Box 122807
San Diego, California 92112

October 17, 2003

John Robertus
Executive Director
San Diego Regional Water Quality Control Board
9174 Sky Park Court
Suite 100
San Diego CA 92123

Re: Mission Bay Landfill and the September 12, 2003 meeting of the San Diego Regional Water Quality Control Board

Dear Mr. Robertus:

Mission Bay Park Toxic Cleanup respectfully requests that the item **Mission Bay Landfill** be placed on the agenda of the September 12, 2003 meeting of the Water Quality Control Board in order that we might inform members of serious matters concerning this site.

Please see enclosed a letter we wish to present to the Water Quality Control Board at the upcoming meeting of September 12th.

A small packet of related documents for distribution on 12 September will be in your hands shortly after receipt of this cover.

Please let us know at your earliest convenience if we have been added to the agenda.

Sincerely,

J.P. Miller Jr.
Mission Bay Park Toxic Cleanup
P.O. Box 122807
San Diego CA 92112

ph. 619/ 429-9446 (or Scott Andrews 619/ 544-6816)

cc John Minan, Chairman, S. D. Regional Water Quality Control Board

Mission Bay Park Toxic Cleanup
P.O. Box 122807
San Diego, California 92112

November 12, 2003 (for distribution)

San Diego Regional Water Quality Control Board
9174 Sky Park Court
Suite 100
San Diego CA 92123

Re: Mission Bay Landfill

Located within the City of San Diego's Mission Bay Park there is a huge toxic waste dumpsite. This site is unfenced and unposted, but buried within are millions of gallons of hazardous substances including industrial solvents volatile organic compounds, acids, heavy metals and pesticides.

The innocently named Mission Bay Landfill is now a predominantly barren area of public parkland that was once operated by the City of San Diego as an unregulated and unengineered, Class I disposal facility for the entire San Diego metropolitan area between the years 1952 and 1959.

For more than forty years the waters and sediments of Mission Bay and the San Diego River have been continuously and harmfully fouled by toxic substances released from Mission Bay Landfill. The health of millions of visitors to Mission Bay Park is still at risk. Wildlife populations in the bay have been decimated. Large areas of public parkland have become virtually unusable.

Please be reminded that:

** We believe that recently uncovered evidence, presented to both California Coastal Commission and San Diego's Mission Bay Landfill Technical Advisory Committee, indicates this toxic waste site is much larger than government agencies claim, and extends completely beneath the SeaWorld leasehold.

** A City-sponsored study once identified 60 U.S. Environmental Protection Agency (EPA) "Priority Pollutants" within the Landfill's waste materials, soils and groundwater.

** Conditions at this site result in the continuous release of contaminated groundwater into the waters and sediments of both Mission Bay and the San Diego River.

** High levels of heavy metals in sediments and surface waters have put Mission Bay in solid company with the New York Bight, one of the most highly polluted water bodies in the nation.

** Distribution of these heavy metals (which affect all levels of the food chain) has led a City-sponsored study to call the Landfill "suspect as a probable source" of those metals.

** These waters and sediments are resources of a public park that is used by a great number of persons for water-contact recreation and as a source of food.

** Mission Bay has been officially declared an impaired water body.

** The heavy metals and industrial chemicals at this site, together with its toxic soils and groundwater are less than 1000 feet from the Rose Canyon earthquake fault-zone. The contaminant-saturated soils at this site are designated high risk for seismic hazard.

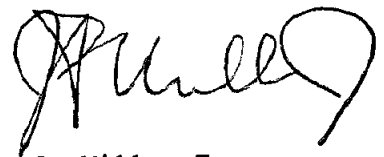
** The EPA has twice scored this site high enough have it placed on the National Priorities List.

We believe all of these facts have long been known to the office of the San Diego Water Quality Control Board. This regional office has turned a bureaucratic blind eye to this huge source of toxic pollution. And it has maintained this see-no-evil attitude for more than twenty years, ever since evidence of Mission Bay's toxic wastes first came to the public's attention.

MISSION BAY PARK TOXIC CLEANUP, a citizens group formed in the public interest, on behalf of the people of San Diego and of the State of California, hereby demands that the San Diego Regional Water Quality Control Board commence immediate actions, under all federal and state laws that may apply, to ensure that toxic industrial wastes, and the contaminated soil and groundwater of Mission Bay Landfill are completely cleaned up.

We remind this Board that is has jurisdiction and primary responsibility for enforcing the Federal Clean Water Act. We contend that this Board would be remiss in that duty by failing to take immediate action to completely eliminate this obvious threat to public health and safety.

Sincerely,



J.P. Miller Jr.
Mission Bay Park Toxic Cleanup
P.O. Box 122807
San Diego CA 92112

ph. 619/ 429-9446 (or Scott Andrews 619/ 544-6816)

cc John Minan, Chairman, S. D. Regional Water Quality Control Board
John Robertus, Executive Director, S.D.R.W.Q.C.B.

John Odermatt
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Ct. St. 100
San Diego, CA 92123-4340

October 28, 2003

Dear Mr. Odermatt,

Thank you for your response to our request letter. As you invited, we will appear to testify during public comments at the November 12 Board meeting.

Four area water bodies are subject to the releases from an unlined and unremediated toxic dump in the middle of the city. Mission Bay, the San Diego River, Famosa Slough, and the Pacific Ocean are critical to tourism.

Recently discovered aerial photographs, and expert and anecdotal testimony now belie the City of San Diego's characterization of their Mission Bay Landfill. In maps and testimony, City personnel, in their capacity as lead agent spokesman, have distorted and covered up the location, extent, contents, and liability risk of this site.

Prior to your staff's written report to board members, I would like to relay new data about the millions of gallons of solvents, volatile organics, heavy metals, and pesticides dumped in the South Shores area of Mission Bay Park. Gallons to which the City is blind. The City refuses to protect the public:

1. The Dump is Double its Indicated Size, a Drastic Increase in River, Bay, Slough, and Ocean Exposure to Poison-laden Leachate from Unlined Shoreline:

The claimed City dump boundaries are inaccurate. The dump actually extends from near Ingraham Street along SeaWorld Drive to Interstate 5.

Don May of California Earth Corps (CEC), a non-profit organization, has presented to the California Coastal Commission and City TAC the following information:

Fairchild aerial photos interpreted by Targhee Company experts indicate the dump extends way westward of the City's standard "approximate landfill limits" map.

San Diego Historical Society photos establish the dump in fact began at the west end of South Shores, and progressed eastward over the years toward the military base at Pike's Field near I-5. Photos show east South Shores lay undisturbed until 1953, with the exception of dumping on the banks of the San Diego River.

2. South Shores is a Gas Factory for Explosive and Deadly Gas:

Disposal site gases can mix, contaminate, and effect movement of groundwater. The City and SeaWorld withheld a key document from the members and document index of the Technical Advisory Committee on the Mission Bay Landfill (TAC). Lessee SeaWorld's soil

vapor report revealed a triple-checked concentration of deadly hydrogen sulfide gas (H2S) in well J-24. The reading was an alarming 1820 ppm H2S in their active guest parking lot.

The California health exposure limit is 0.03 ppm, and release fatalities occur at levels over 100 ppm.

This threat is undiminished by City protestations it was in a well boring fifteen feet down. This is not an isolated site test result. In fact, much of South Shores has been shown a source of both hydrogen sulfide and methane. 1980's testing at the canceled Ramada resort project revealed gas near I-5. Moving west, late 80s excavation for the park boat launch ramp encountered H2S, resulting in seven hospitalizations and one delayed fatality. Toxins ran out of the cut and pooled in the basin. Westward onto the SeaWorld expansion parcel, a more recent drill series hit a plume of trichloroethane next to the bay, and also struck elevated methane and H2S at well LE-4, resulting in urgent backfilling and worker evacuation. Moving toward Ingraham Street into SeaWorld, testing revealed wells with H2S exceedences around J-24..

The Department of Toxic Substances Control recently did J-well area air tests that came up negative for H2S. A one time test is virtually meaningless to measure a threat of deadly gas release. Dumps release intermittently over time. Especially ones like this with porous fill in an active earthquake construction zone. Especially ones like this that are uncapped and unlined.

DTSC's retest was hindered by the fact the J-24 well, in fact all J-series wells were destroyed after three revealed deadly H2S! Someone also dumped spreads of gravel in the parking lot which serve to hide the well heads. Why does deception replace sequential remonitoring of gas-filled wells in a high public use area? Is deadly gas still fifteen feet from SeaWorld visitor families, and upwind of park visitors?

3. Lead Agent Fails to Regulate the Release and Threat of Site Water and Gas Contamination:

Multiple releases of dump toxins to the bay and river have been ignored by the lead agent. Just one example: Why was the public allowed to swim, wade, paddle, sail, water ski, jet ski and fish in South Channel for the fifteen years from 1983 to 1998 when deadly Thallium registered from 40 to 1110 ppm in the bay and river? The recreational skin contact limit is 15 ppm. Why did the lead agent cease testing for Thallium and other heavy metals that release from the site?

The City disregards site gas pockets:

-- The boat launch fiasco.

-- The LE series well drillers were apparently surprised by methane and H2S in LE-4.

-- Failure to notify, post, retest, or remediate H2S at J-24 and its surrounding well heads.

-- Failure to challenge lessee destruction of J-series wells.

-- A City employee privately revealed to us the footprint for the entire Splashdown Ride was excavated to the water table, significant cap removal of the same kind as was disastrously undertaken at the boat ramp.

-- No oxygen tanks are visible at the Splashdown construction site. Are buried

infrastructure pipe gas dams being installed?

-- City refuse employees, the site's supervisors and TAC members, have admitted they lunched and visited the Splashdown foundation excavation, then failed to test removed soil or groundwater for toxins on site or on arrival at city dumps. This is apparently under DTSC investigation.

4. Alarmingly, the lead agent is actively promoting public site use:

-- With three H2S hits at or near the boat launch ramp and SeaWorld, the City is actively permitting SeaWorld expansion projects.

-- Encouraging more area use, the City has expanded the boat launch cove public beach and the South Shores model airplane facility.

-- The City has repermitted the fatal gas release site at the boat launch ramp three times, for thousands of women triatheletes, in the last year.

5. Like Fiesta Island, South Shores was a destination for sewage sludge, another hazardous waste. Both recent ground and extensive aerial fotos from the Historical Society and County Planning Department indicate the site received sewage sludge. Photos taken of excavations at the Splashdown Ride site and a declaration from an ex-City site supervisor both support this contention. The supervisor states that sewage sludge was piped from the Point Loma facility to fill South Shores cells.

6. The Dump is not a Landfill, but a Dump with hazardous waste.

Targhee calls to question City designation of the site as a landfill. As a site never engineered, permitted, fenced, or regulated during its operations, the site designation fails.

7. The Military joined City Garbage truck fleets and military aircraft subcontractors in dumping at South Shores.

8. Possible Mission Bay water health impacts to swimmers:

Sickness follows swimming in the bay. Anecdotal testimony re lingering health impacts suffered offshore of the dump in the waters of Mission Bay is emerging from triatheletes. They have been impacted after swimming in permitted events at South Shores.

9. The lead agent apparently flooded the area with sewage or sea water in 1957 and 1961. Will the City study this intentional wholesale contamination of South Shores?

10. Photographs also indicate dump operations extended past City-claimed landfill closure in 1959.

Impaired Water bodies demand proactive regulation. Bay wildlife are dying, with whole species populations disappearing. This bay's decline demands intervention by Board Members to rescue Mission Bay's biodiverse potential. This water body is increasingly damaged and unavailable as a recreational resource. This is directly traceable to its lead agent, the City of San Diego:

-- **City response to a huge unlined aerospace site is to suspend type and frequency of monitoring for heavy metals, pcb's and other contaminants.**

-- **The City uses inflated background level data to minimize exceedences.**

-- **The City refuses to release the required 10 year update of the Mission Bay Park Natural Resources Management Plan,** denying regulators bioindicator baseline data to assess declining bay water quality and aquatic-based wildlife populations.

-- **The City refuses to require filtration of facility wash down and parking lot runoff** at SeaWorld.

-- **The City refuses to institute the Mission Bay Park Master Plan-recommended De Anza Point 110-acre wetland restoration mitigation.** This is critical, literally the last opportunity to effectively passively filter impaired bay waters, handle urban and storm runoff from the bay's largest watershed of Rose Creek, and re-institute nursery marsh habitat for our commercial and sport fishing industries.

-- **The City has failed to do video inspection and replacement of antiquated, damaged sewer feeder lines** in the commercial and residential neighborhoods that discharge into Park ground- or bay waters.

-- **The City refuses to adjust bay pollution standards for recreation, skin contact, and incidental ingestion in line with recent DNA** fetal risk level tests.

-- **The City needs to fund initial upstream assessment of urban runoff sources.**

-- **The City should address pesticide and fertilizer policies at the bay golf course.**

Mission Bay Park Toxic Cleanup continues its years-long effort to gain the attention of the Board to a possible 300-acre hazardous waste site with municipal- and military-sourced toxins, sewage, gases, and garbage.

Environmental groups, City whistle blowers, swimmers, and former refuse employees are exposing the lead agent. Following the California Earth Corps presentation September 19, 2003, the City Technical Advisory Committee voted to post the site to warn the public of site water quality and gases. The City of San Diego City Manager and City Attorney have refused to do so.

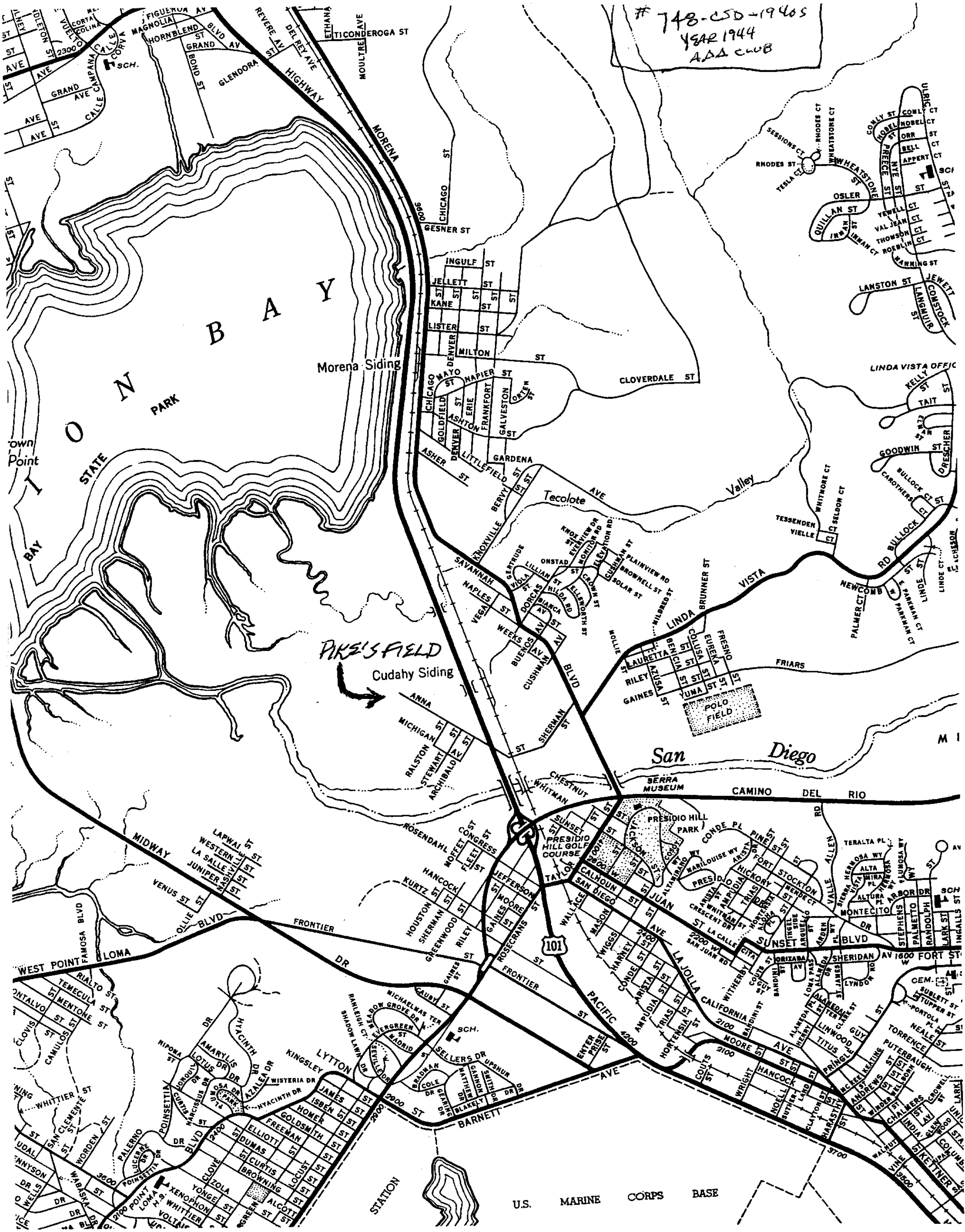
It is unacceptable for the public to be at risk in our most visited park. The problems, long unaddressed, are contamination from a huge, unlined, unremediated dump, drastically diminished wetland filtration, and unaddressed upstream runoff.

Lead agent malfeasance and recent revelations may be moving Mission Bay Park into an emergency threat to public health and safety. Thank you again for updating the Board on a dying California bay coming into alarming focus.

Sincerely,

Scott Andrews

enc:
Aerial photographs
Pike's Airfield map
California Earth Corps info



748-CSD-1940s
YEAR 1944
AAA CLUB
MISSION BAY
STATE PARK
Morena Siding
PIKE'S FIELD
Cudahy Siding
MORENA BLVD
HIGHWAY
TECOLOTE AVE
Tecolote Valley
LINDA VISTA RD
LINDA VISTA OFFICE
CLOVERDALE ST
FRIARS
POLO FIELD
San Diego
SERRA MUSEUM
CAMINO DEL RIO
PRESIDIO HILL PARK
PRESIDIO HILL GOLF COURSE
MIDWAY
FRONTIER
WEST POINT LOMA
ROSECRANS ST
101
PACIFIC
BARNETT AVE
SUNSET BLVD
FORT STOCKTON
JUAN ST
SAN DIEGO AVE
CALHOUN ST
LA JOLLA
CALIFORNIA
MOORE ST
HANCOCK
KETTNER
ENTERPRISE ST
STATION
U.S. MARINE CORPS BASE

SeaWorld ride on a toxic site, activist claims

By Kathryn Balint
STAFF WRITER

State and city officials are examining evidence that an environmental activist says shows SeaWorld's newest ride is being built atop an old toxic waste dump.

SeaWorld officials, who said they have had no reason to believe there is a problem, are also studying the evidence presented to a San Diego advisory committee yesterday.

Don May, president of California Earth Corps, which is based in Lakewood, told the committee that an old toxic waste dump in South Mission Bay is far larger than anyone thought and extends as far as SeaWorld's newest ride, a 95-foot-tall water flume, now under construction. He also has made his allegations to the state Coastal Commission and state Department of Toxic Substances Control.

SEE **Toxic, B4**

JAY WING / Union-Tribune

Correction:
H_2S exposure

TOXIC
CONTINUED FROM PAGE B1

120 acres used to dump waste in the 1950s

May showed the Mission Bay Landfill Technical Advisory Committee historical aerial photos of Mission Bay, old city memos, recent vapor tests done by SeaWorld and an analysis by an environmental consulting firm.

May pointed to the vapor tests, which show hydrogen sulfide in high levels beneath a spot in the parking lot, about 300 feet from the new ride.

That, May said, endangers theme park workers and patrons.

Hydrogen sulfide is a colorless gas that smells like rotten eggs. Poisoning by hydrogen sulfide usually occurs by inhalation, affecting organs and the nervous system, and, in high doses, causes death.

May said the hydrogen sulfide in Mission Bay is accompanied by methane, an odorless and colorless gas that is a by-product of decomposing organic matter.

May referenced city documents that show that eight workers building a boat ramp in Mission Bay, not far from SeaWorld, in 1989 were hospitalized for methane exposure. One of the workers died three weeks later, and the city settled a wrongful death lawsuit in that case for $10,000. An autopsy said the death was from natural causes.

May called the suspected dump site at SeaWorld "a ticking time bomb."

He said the easiest solution would be to burn off the methane and hydrogen sulfide gases.

May said that, in light of his finding, the state Coastal Commission should revoke SeaWorld's permit to build the splash-down ride.

He accused SeaWorld of knowing about the hazardous waste but keeping its findings from the commission when seeking a permit to build the new ride.

SeaWorld officials denied that any such cover-up took place.

After yesterday's meeting, SeaWorld spokesman Dave Koontz said the theme park ha shared all of its documentatio — including that which showe high hydrogen sulfide level under the spot in the parkin lot — with the city and state.

Patrick Owen, vice presiden of design and engineering fo SeaWorld, said the park ha implemented a state-approve plan to ensure the safety o workers building the splash down ride. One measure in cludes taking air samples, all o which, Owen said, have "com up clean."

"We're 100 percent confiden the site is a clean site, and ther are no issues," Owen said.

Nonetheless, SeaWorld is re viewing May's documents, h said.

SeaWorld, owned and oper ated by Anheuser-Busch, is th 13th most popular theme par in the United States, attracting nearly 4 million visitors a year The city owns SeaWorld's near ly 200-acre site and leases it tc the theme park.

The Coastal Commission ap proved the splash-down ride last year.

SeaWorld sits next to 120 acres that are known to have been used for disposal of industrial waste in the 1950s. The Mission Bay Landfill Technical Advisory Committee is overseeing a $600,000 study done by an environmental engineering firm to determine if the old dump site is leaking toxic pollutants into Mission Bay.

City Councilwoman Donna Frye, whose district includes Mission Bay, heads the committee. She said she will ask the city manager and city attorney to investigate the allegations raised by May at yesterday's meeting.

"I'm very concerned," she said. "But I caution people that we need to get all sides of the issue. You want to make sure you have good science."

Out of concern for the public's safety, three of the committee's five members, not including Frye, voted to ask the city to curtail sporting and other events near the dump site until it is determined what wastes, exactly, are there and what dangers, if any, they pose. A triathlon is scheduled for near the boat ramps next month, and model airplane enthusiasts regularly use the area.

Kathryn Balint: (619) 293-2848; kathryn.balint@uniontrib.com

A
B
C

1935 MISSION BAY 15968

LOOKING NORTH

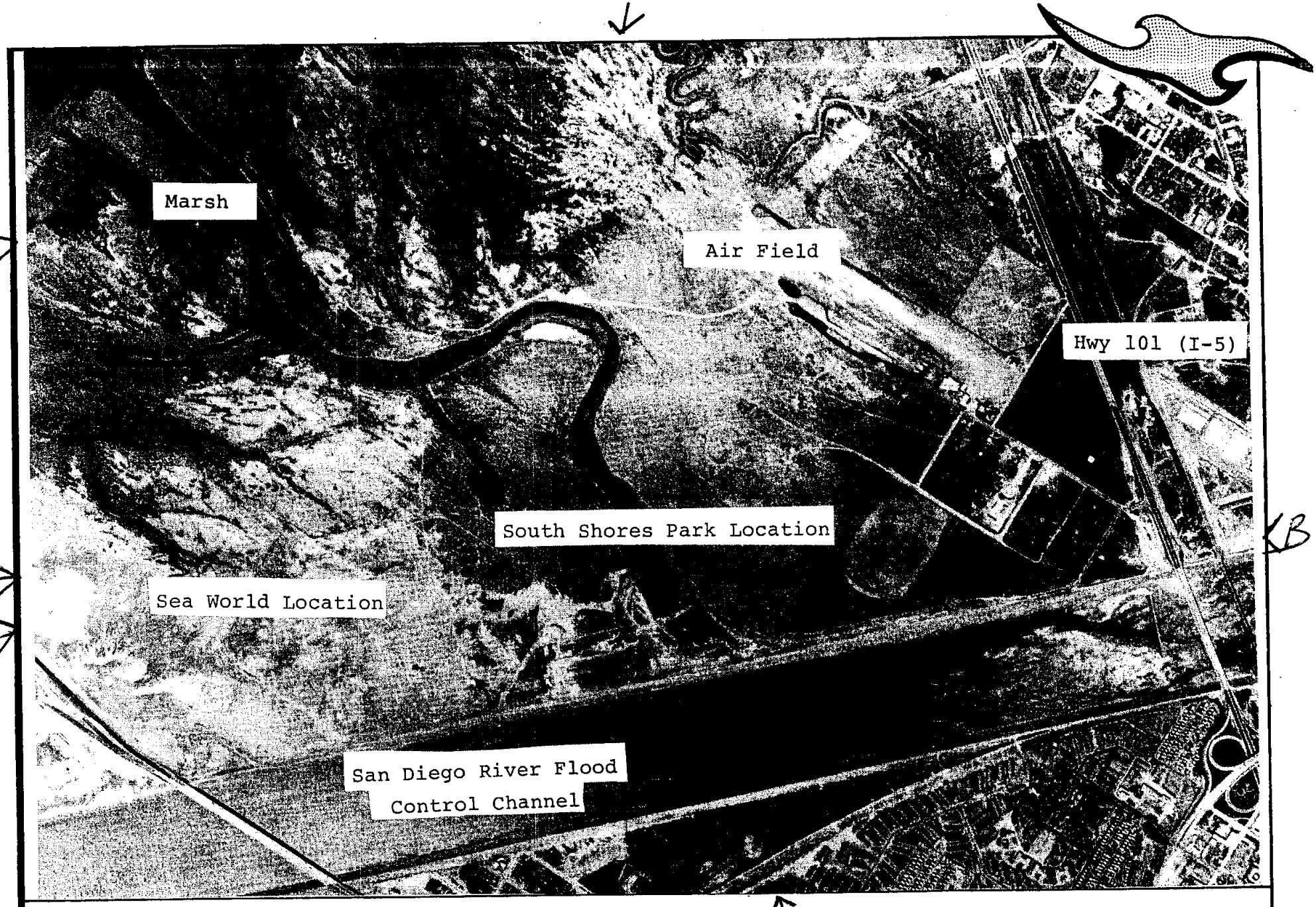
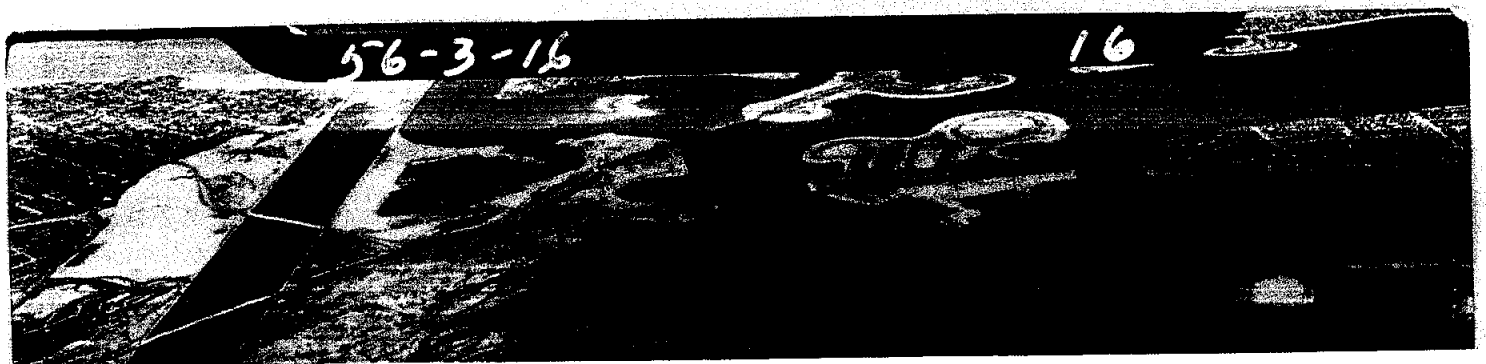


Figure 5. Aerial Photo of the site and vicinity, 1953.



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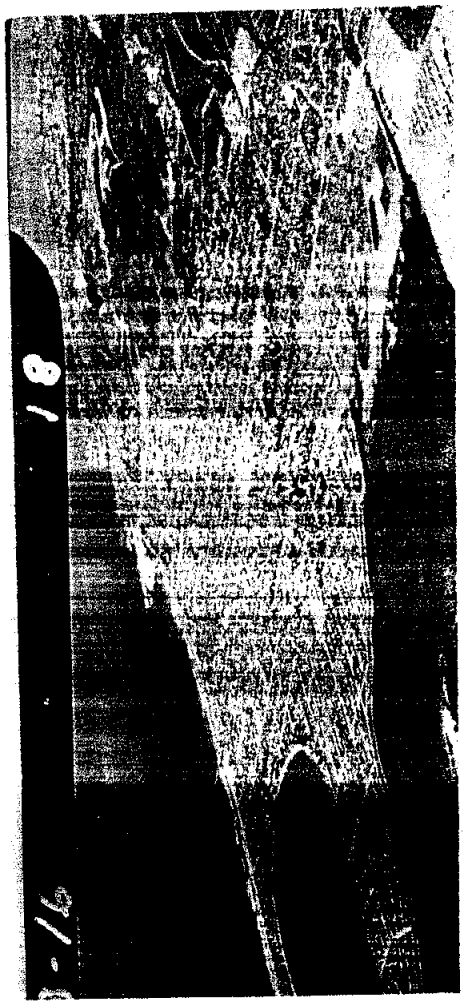

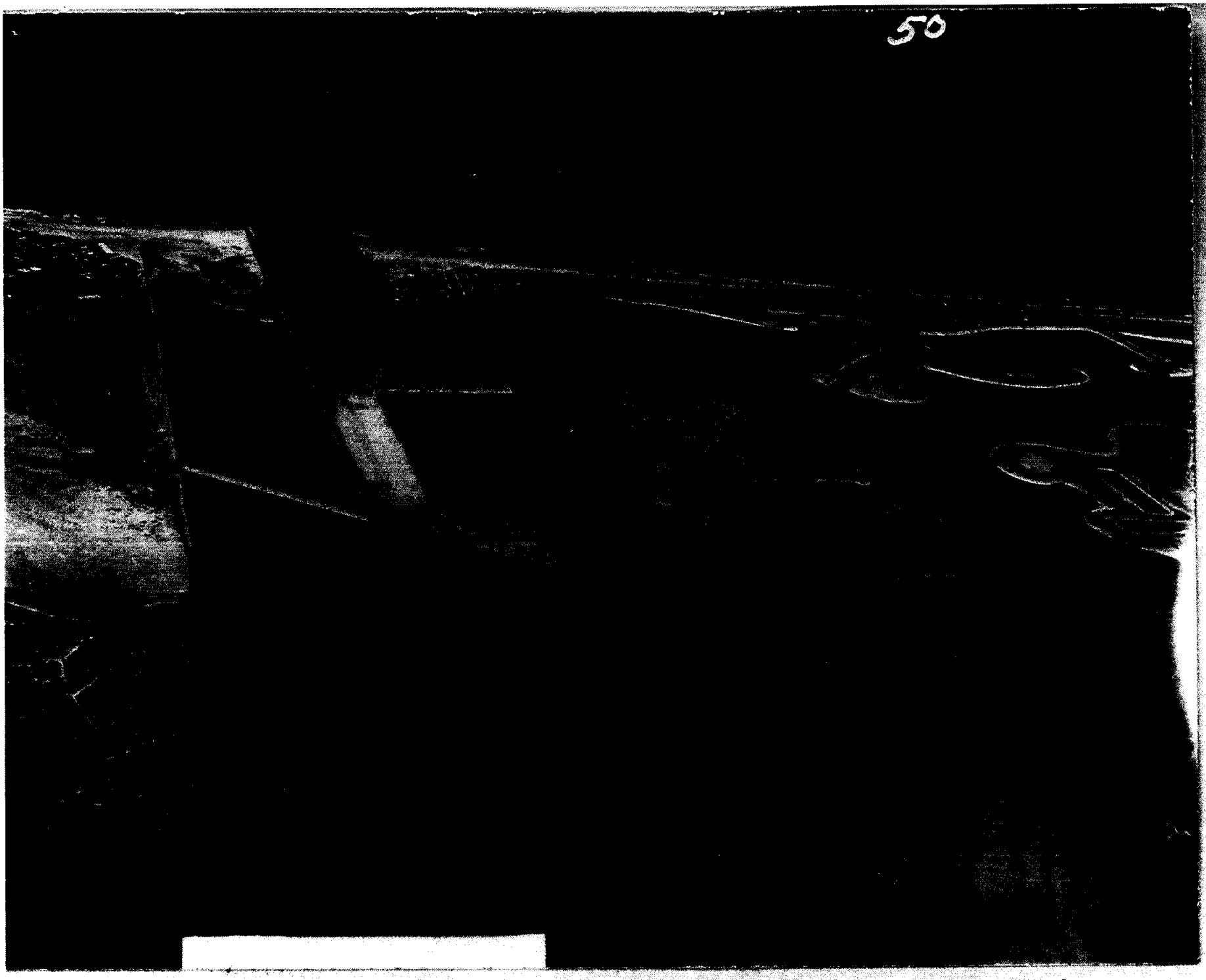

MAY 24 1958

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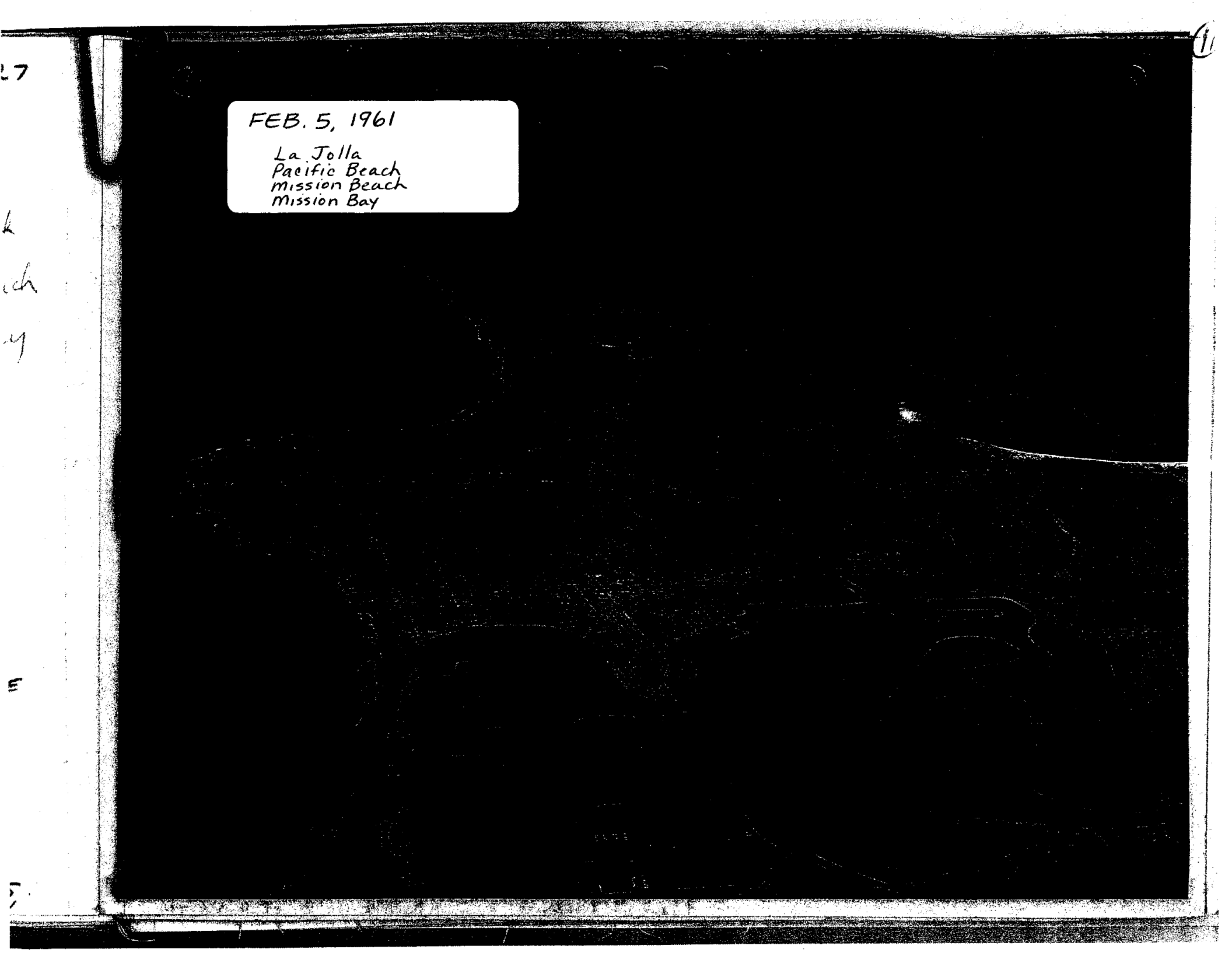
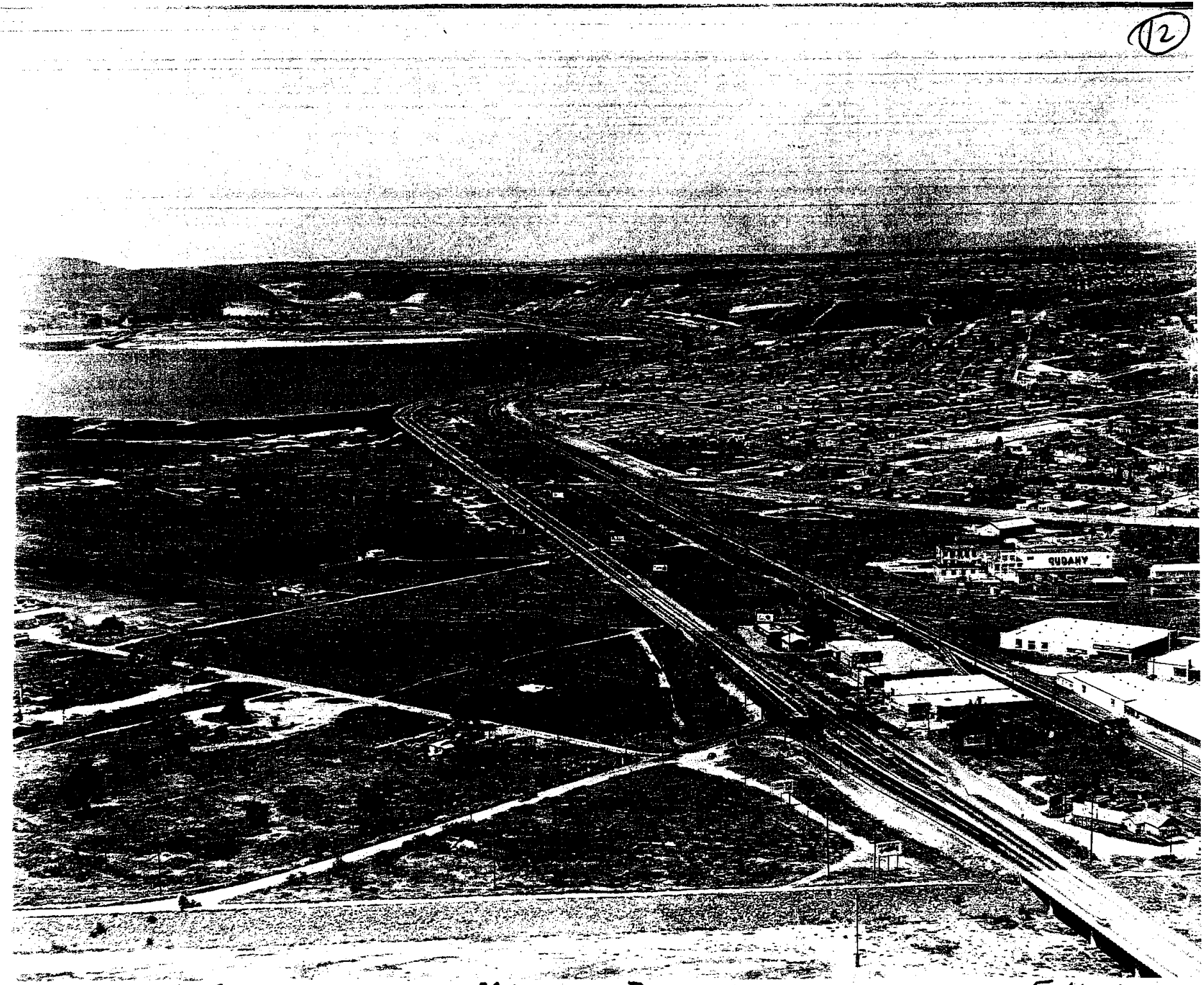

FEB. 5, 1961
La Jolla
Pacific Beach
Mission Beach
Mission Bay

(12)



#UT P248-485

Mission Bay

5-15-57

ATTACHMENT B-14c

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▶ 5

To Sylvia Castillo	From Chelsea Academy
Dept./Agency San Diego Env. Svcs	Phone # 415-972-3098
Fax # 858-492-5041	Fax # 415-947-3520

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

California Earth Corps
San Diego Office
Post Office Box 1920
Bonita, CA 91908-1920

July 30, 2003

U.S. Department of Interior
Environmental Protective Agency
Pacific SW Regional Office
75 Hawthorne Street
Attn.: Keith Takata, Director (SFD-1)
San Francisco, CA 94105

Re: Supplemental Information to our Letter of May 19, 2003, and Request for Intervention by EPA (EPA# CAD980881353)

Dear Director Takata:

In view of the fact that we have not received a response to our letter of May 19, 2003, (refer to Enclosure A), we are now providing you with additional information that has only now come to our attention. **The failure of the lead enforcement agent, the city of San Diego, and the continued failure of the Regional Water Quality Control Board (RWQCB) to comply with your contractor's conditions, linked with the continued development on and around the toxic waste dump, demands your review of this matter and possible issuance of emergency orders.**

The estimated 115 acres of the Mission Bay Landfill and the co-located, yet larger site of the toxic waste dump is now under development! The City of San Diego has issued several construction permits on a portion of the 115-acre site. The California Coastal Commission denied a permit, for six months, for a parking lot on May 7, 2003 when the Sierra Club filed an objection. Another nonprofit, California Earth Corps, filed a petition for the Commission July 21, 2003, to revoke a permit to build a major amusement ride in the subject area. **To date the City's tenant, Anheuser Busch Entertainment Corp., acting on behalf of SeaWorld Adventure Park, has removed more than 17,000 cubic yards of the "cover" of a site which may include both landfill and toxic waste dump deposits.** We highlight the text on page 2, item 10 of the Summary Score sheet prepared by the EPA's consultant (refer to Enclosure B). The evaluator states, **"this cover is contaminated."**

We wish you to fully understand that the city of San Diego's Parks and Recreation Department and Real Estate Assets Department are actively promoting public use at the site. The site remains unfenced and unposted. Since 1941, when the city acquired title to this property from the State of California, no active control measure has been utilized for the public or the endangered animal species that frequent this regional recreational park.

Despite the operation, for profit, by the city of a vast sanitary landfill and an unregulated toxic waste dump in Mission Bay Park, the city has never fenced or posted a facility whose On-Site Exposure Pathway received a high score of "100" during LSI review. (refer to Enclosure C)

A clear risk management failure continues by the lead enforcement agent. To date, a model airplane club operates atop the dump site, with the blessing of the city for recent improvements. Immediately adjacent to the north is a sandy beach which the city has recently expanded and cleared of weeds in an effort to attract more sunbathers and swimmers. Finally, the boat launch ramp, built at the expense of one fatality and seven hospitalizations in 1988, due to H2S, is in full use by unknowing members of the public. **The environment as well as citizens are at increasing risk by the current practices and long standing policy of the property owner, the city San Diego. We urge the EPA to take positive measures to preclude a disastrous release!**

In 1997, when a consultant for the city drilled a test well (LE-4) in this area, it encountered H2S at concentrations as high as 9 ppmv and methane at a maximum of 1,000 ppm. As an aside, five of six wells in the LE-series detected a plume of Trichloroethane, which was attributed to the former nearby aerospace industry.

The infamous test well (J-24) , as fully described in our letter to you of May 19, 2003, sits center-of-mass in the new construction area. It is of great concern that it is situated in the current visitors' parking lot. Also, aggressive development plans may change that status at any time. No steps have been taken by the City or SeaWorld to either restrict public access or remediate this area that has tested hazardous for flammable and lethal gas.

Another development project in the permit process, The Promenade, is immediately adjacent to the landfill's north. It features public access pedestrian facilities as a condition to the CA Coastal Commission. In our opinion this project should prompt urgent review of the known toxic waste hazards with respect to excavations of the non-engineeered dredge soils in the area.

In mid-July 2003, the city contracted with Environmental Business Solutions (SCS Engineers) to conduct a site assessment, of the Mission Bay Landfill, for the presence and disposition of toxics, and to define the precise boundaries of the landfill. We note with chagrin that the location and disposition of the toxic waste dump was not separately delineated in the study proposal as a primary goal. Although work has begun, no Scope of Work has been provided to the Technical Advisory Committee or released to the public.

CA Earth Corps is alarmed that the study did not precede current area construction and development, and that the Scope of Work may confine the study area to that 115 area parcel that has traditionally been asserted, without scientific basis, to be the extent of the sanitary landfill.

CA Earth Corps believes it is prudent to impose a moratorium on new construction, development, and excavation in the study area at least until preliminary findings are published. Regrettably, the city continues to approve construction permits submitted by SeaWorld, and the CA Coastal Commission received a new permit application from SeaWorld on July 1, 2003.(Refer to Enclosure D).

CA Earth Corps, in preparation for filing a Petition-for-Revocation, before the Coastal Commission, recently retained a chemical soils expert to review the historical studies and data, and to render a professional, technical opinion. We provide you, as enclosed herein, the finding of Paul Rosenfeld, Ph.D. of SWAPE LLC. dated July 21, 2003. (Refer to Enclosure E).

We conclude with a recital of the sordid role that the Regional Water Quality Control Board has apparently played in the obfuscation of this public health issue. In direct discussion with Water Board Officials we have learned that they have continued to ratify the LEA's decision to reduce the frequency of testing and the extent of site

monitoring. Although they have recently retiled it to include the word "hazardous", The Water Board is reluctant to reclassify the toxic waste site as a Class I dump. This is significant as the landfill is inactive yet not closed. We find this inconsistent with the fact the site still contains millions of gallons of 86 EPA-identified pollutants.

By a careful read of your contractor's preliminary remarks on the 6/19/90 scoring sheet, **it appears that sources did not fully disclose information to the evaluator, your contractor.** For example, the comments on item #15 are patently wrong. Commercial sport fishing based in Mission Bay has been continuously practiced in the Pacific Ocean, just 1/2 mile from the dump site. Also, SeaWorld in all of its three configurations (marine educational, research, recreational) as of the evaluation date, always used the waters of the Bay and Ocean for industrial purposes.

We add that the toxic dump has never been lined and that it may leak into the waters of the San Diego River, Mission Bay, Famosa Slough, and the adjacent waters of the Pacific Ocean.

Aeration exposure from jet skis, power boats, and water skiing remains a serious public health concern. In our opinion, prolonged exposure in that vein exceeds the "incidental ingestion" exposure provided for in the EPA's doctrinal guidelines. Recreational skin contact exposure and food chain pathway contamination are real issues that have never been adequacy addressed by the City or regulators. Tests currently being performed fail to include detection of heavy metals or sediment contamination. The City has suspended those tests!

We appreciate your time on this matter. As our organization continues to unearth relevant documentary evidence, we will provide you with our findings as

appropriate. Mission Bay Park has been forced by the lead agent since 1941 to host a sewage sludge pond treatment facility, garbage landfill, and toxic dump. We urge you to direct your staff to review this matter with an emphasis on regulatory compliance and public safety.

Sincerely,

John E. Wilks, III
(619) 671-8227

Scott Andrews
(619) 544-6816

Enclosures
A--Letter, Earth Corps, 05/19/03
B--Summary Score sheet, 06/19/90
C--Memorandum, Ecology and Environment, Inc. 06/29/90
D--Digital Photographs
E--Opinion, SWAPE LLC, 07/21/03

California Regional Water Quality Control
San Diego Region

ATTACHMENT B-14d

Internet Address: http://www.swrcb.ca.gov/rwqcb9
9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
Phone (858) 467-2952 • FAX (858) 571-6972

Winston H. Hickox
Secretary for Environmental Protection

Gray Davis
Governor

November 4, 2003

Mr. John E. Wilks, III
Executive Board Member
Sierra Club, San Diego Chapter/
Calfornia Earth Corps
3820 Ray Street
San Diego, CA 92104-3623

In reply refer to:
LDU:06-0378.02:mcdab

Mr. Scott Andrews
Mission Bay Park Toxic Cleanup Group/
California Earth Corps
P.O. Box 122807
San Diego, CA 92112

Dear Messers: Wilks and Andrews:

SUBJECT: MISSION BAY LANDFILL

The purpose of this letter is to acknowledge our receipt of your recent letters (dated October 6, 17, and 28, 2003) and attachments thereto providing us with the additional information and your concerns about past discharges of wastes into the Mission Bay Landfill and the possibility that waste may have been discharged at other areas located in proximity to the landfill. I am providing this letter to both of you because it appears that you share concerns about a number of similar issues associated with the "South Shores area" and the Mission Bay Landfill.

As indicated in our previous letters (dated August 4, 2003 and August 22, 2003) provided in response to Mr. Wilks, the Regional Board is aware that significant quantities/volumes of hazardous materials/constituents were historically discharged into the Mission Bay Landfill. Our records date back to the operational lifetime (circa 1952 to 1959) of the Mission Bay Landfill. As indicated previously, the Regional Board currently regulates monitoring and post-closure maintenance of the Mission Bay Landfill under Order 97-11 (and addenda thereto).

The Regional Board supports the efforts of the Mission Bay Technical Advisory Committee (TAC). From the participation of our Regional Board staff in the Mission Bay TAC, we understand that the City of San Diego has obtained the services of a contractor for the completion of a site investigation to assess the scope of work developed and approved by the TAC members. Further, our staff understands that the assessment will begin in October with results due back to the Mission Bay TAC members during July 2004. We look forward to reviewing the final site assessment report of results from that work.

Thank you for keeping the Regional Board informed on your concerns about the Mission Bay Landfill and providing the additional information for our consideration. The staff is preparing an Executive Officer's (EO) Report item (including your submittals dated October 6, 17, and 28, 2003) for the next meeting Regional Board on November 12, 2003. You should also be aware that the EO Report item will include a fax copy of a letter (dated July 30,2003) from the California Earth Corps to the U.S. Environmental Protection Agency. Although we have not scheduled a separate agenda item for this topic, you are welcome to address this issue to the Regional Board during the Public Forum on November 12, 2003. The Regional Board meeting will be held at the Regional Board offices located at 9174 Sky Park Court, Suite 100, San Diego and begin at 9 A.M. You can obtain additional information about the meeting on our web site: http://www.swrcb.ca.gov/rwqcb9/rb9board/meetings.html.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding this letter, please contact me at (TEL: 858-637-5595 or email at oderj@rb9.swrcb.ca.gov) or Mr. Brian McDaniel (TEL: 858-627-3927 or email at mcdab@rb9.swrcb.ca.gov).

Sincerely,

JOHN R. ODERMATT
Senior Engineering Geologist, Land Discharge Unit

JRO:bkm

cc: Ms. Nicole Capretz, Office of the Council Representative for District 6, 202 C Street, 10th Floor, San Diego, CA 92101 w/o Enclosures

Mr. Chris Gonaver City of San Diego, Environmental Services Department, 9601 Ridgehaven Court, Suite 310, San Diego, CA 92123 w/o Enclosures (for distribution to all Mission Bay TAC members)

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THE SAN DIEGO UNION-TRIBUNE

ATTACHMENT
B-15

Campo's plan for landfill on reservation is put on hold

By Chet Barfield
UNION-TRIBUNE STAFF WRITER

October 11, 2003

CAMPO INDIAN RESERVATION – Longtime plans for a landfill here are on indefinite hold because the Campo Indian band hasn't been able to reach an agreement with its prospective partner, the tribe's leader says.

The East County tribe is talking to other firms but isn't sure when, or if, the controversial 400-acre project might be built.

"Right now we don't have a deal with anybody," said tribal Chairman Ralph Goff. "Until you really have a deal, you can't do any of it."

The Campo band has been interested since the late 1980s in developing a landfill on its reservation 65 miles east of San Diego, near the U.S.-Mexico border. It spent the early 1990s pursuing detailed plans with an Ohio-based firm, Mid-American Waste Systems. The project obtained federal approvals and a construction permit from the tribe's environmental regulatory agency.

But it was fiercely opposed from the outset by neighboring residents, who feared it would pollute their groundwater. In part because of their relentless legal and political challenges, Mid-American pulled the plug on the project in 1995 after spending millions on planning and environmental reviews.

The long-shelved landfill plan resurfaced early this year when a county report listed the reservation among sites expected to handle the region's long-term disposal needs. This time the tribe's prospective partner was a New York-based recycling firm called Campo Resource Recovery.

In January, the firm submitted a project proposal to a state bond-financing agency. The California Pollution Control Financing Authority, which helps arrange tax-exempt market funding for landfills, issued a preliminary go-ahead Jan. 28.

But since then, Campo Resource Recovery has not filed follow-up documents that a spokeswoman said are required to get the financing under way.

Goff said Campo has has not formally severed ties with the firm, but it's pretty much out of the picture as the tribe seeks another partner.

"Basically I don't think they had the ability to do (the project)," he said.

Campo Resource president Bryan Harrison, reached this week, was nebulous about the company's status with the tribe. "We're in a series of interlocking agreements," he said. "I'm not really in a situation where I can talk about it."

Asked to elaborate, he added: "I'm very, very pleased with the progress on the project. That's all I can tell you."

Boulevard rancher Donna Tisdale, who spearheaded opposing efforts as leader of a group called Backcountry Against the Dump, said she and her neighbors are glad the landfill plan appears to be stalled.

"It's been hanging over our heads for a long time," she said. "This is good news. I can't see anybody with any intelligence investing money in this project."

Goff said Campo will continue pursuing a landfill as a mid-level priority, but more pressing concerns are boosting business at its Golden Acorn Casino, securing funding for a possible hotel and tending to internal tribal matters.

"The main things now are managing what we do have and making sure everything we've got is working right," he said.

Tisdale said neighbors have not opposed the tribe's gambling venture, which opened in 2001.

"That's always been the hope of my group," she said, "that they would focus on the casino and other activities that wouldn't pose such a huge threat to the area's groundwater."

Chet Barfield: (619) 542-4572; chet.barfield@uniontrib.com

SignOnSanDiego.com
THE SAN DIEGO UNION-TRIBUNE

ATTACHMENT
B-16

Builders urged to lay off the landfill

Officials consider ways to boost debris recycling

By Kathryn Balint
UNION-TRIBUNE STAFF WRITER

October 13, 2003

Dumps in San Diego County are feeling the effects of low interest rates: a boom in construction and demolition debris.

But what's good for the economy isn't necessarily good for local landfills. And that has trash officials countywide looking at ways to keep the leftovers from construction and remodeling projects out of the dump.

They're considering laws mandating the recycling of construction materials, or creating financial incentives to encourage it.

"With the extended low interest rates, everybody is pulling out equity in their homes to remodel, and a lot of construction waste is being generated," said Steve Grealy, acting assistant deputy director for the city of San Diego's Environmental Services Department.

By one city estimate, as much as half of the region's construction waste is already recycled. Materials such as concrete, asphalt and rock are reused for road base.

Even so, each year, 586,000 tons of construction debris generated from sites in the city of San Diego – concrete, old carpeting, drywall, rock, even dirt – goes into San Diego's only municipal dump, the Miramar Landfill. It accounts for more than one-third of the waste buried there each year.

Officials at the other major dumps in the county, Sycamore Canyon Landfill near Santee and the Otay Landfill near Chula Vista, estimate that construction debris makes up 15 percent of the trash arriving there.

The influx of construction material comes at a time when half of the 18 cities in the county, and the unincorporated areas of the county, are not meeting the state's mandate to recycle 50 percent of their trash. The county as a whole gives a second life to 46 percent of its trash.

Recycling construction debris could go a long way toward helping cities meet the state's mandate. The debris is heavy, and cities' recycling efforts are measured in tons, trash officials said.

Scrap metal and glass can be melted down and reused. Wood can be recycled for use in chipboard or mulch. Clean drywall can be ground up and used for new drywall or as a soil additive.

"Potentially, it could give us the biggest bang for our buck," San Diego's Grealy said.

Cities that don't meet the 50-percent requirement can face state fines of $10,000 a day.

San Diego's recycling rate slipped from 48 percent in 2000 to 45 percent in 2001, a decrease Grealy blames on the increase in construction waste. The city must recycle an additional 165,000 tons a year to meet the state's mandate, Grealy said.

The movement to recycle construction and demolition debris is catching on nationwide:

- Steel from the ruins of the World Trade Center is being melted down to form part of a Navy ship that will be named for New York.

- Wisconsin announced that it would increase its recycling efforts after a study in August showed that nearly one-third of the waste in landfills there came from construction and demolition.

- Collier County, Fla., plans to extend the life of its landfill by using discarded construction materials to form two reefs in the Gulf of Mexico offshore.

In California, the Integrated Waste Management Board is drafting an ordinance that cities throughout the state could adopt to mandate the recycling of construction debris. A committee of the San Diego Association of Governments is coming up with a sample ordinance of its own.

The most recent draft of that ordinance applies to all construction, demolition or renovation projects of 1,000 square feet or more. It requires contractors to pay a fee, submit a recycling plan and obtain a performance bond. The draft is being reviewed by local cities.

The city of San Diego has its own committee addressing construction and demolition debris.

That committee, headed by former council members Judy McCarty and Harry Mathis, recommended on Oct. 6 that the City Council adopt a policy encouraging recycling rather than enact a law mandating it.

"This county has a very strong environmental ethic," McCarty said.

The draft policy before the council makes it a goal to recycle all concrete, rock, asphalt and dirt from construction sites, and to recycle half of all remaining building materials. It also calls for the city to explore financial incentives that could be offered to induce people to recycle construction materials.

One suggestion for a financial incentive came from committee member Steve South, chief operating officer of the waste hauler EDCO. Instead of paying $19 for every ton of waste collected in San Diego, the haulers should pay $19 for every ton of waste sent to a landfill, he said.

The construction industry prefers a voluntary program over a mandatory one. With a mandatory program, "projects slow down, costs go up, housing prices go up," said Matthew Adams, director of governmental affairs for the Building Industry Association of San Diego County. "We want to see an incentive-based voluntary program that is easily manageable."

Still, the biggest obstacle to recycling construction and demolition debris is finding the markets for the recycled material in San Diego County.

Toward that end, San Diego is looking at the possibility of establishing a facility at the Miramar Landfill dedicated to construction and demolition debris recycling. And, beginning this month, the city plans to grind up old drywall for use in its compost.

"You've got to have the facilities and have them set up right," said Steve Young, president of Allan Co., a recycler. "It's going to come with some pain."

State Water Resources Control Boar

ATTACHMENT C-2

Executive Office

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Winston H. Hickox
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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at http://www.swrcb.ca.gov.

OCT 14 2003

2003 OCT 15 A 8:59

Water Docket, ID No. OW-2003-0063
U.S. Environmental Protection Agency
Mail Code 4101T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

COMMENTS ON THE INTERIM STATEMENT AND GUIDANCE ON APPLICATION OF PESTICIDES TO WATERS OF THE UNITED STATES IN COMPLIANCE WITH FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)

The California State Water Resources Control Board (SWRCB) believes that the Interim Guidance conflicts with the precedent established by the Ninth Circuit Court of Appeals (Ninth Circuit). Because California is in the Ninth Circuit, the interim guidance proposed by the U.S. Environmental Protection Agency (USEPA) creates a conflict for both the State [which issues national pollutant discharge elimination system (NPDES) permits] and the regulated community, who are subject to Ninth Circuit rulings. This comment letter explains the conflict and requests that USEPA revise its guidance so that it is consistent with the controlling law in the Ninth Circuit states. The State is also concerned that the guidance inadvertently creates negative implications for other programs by interpreting the definition of "pollutant" in a new manner, as explained below. Finally, California believes that if USEPA wishes to create an exemption for pesticide applications conducted in compliance with FIFRA, it should seek revisions to FIFRA and/or the Clean Water Act (CWA), clarifying that NPDES permits are not required, rather than attempting to obtain that result through strained interpretations of existing law.

Issue: Is a Pesticide a "Pollutant" When Applied Consistent with FIFRA?

USEPA's Interim Guidance states that pesticides applied consistent with FIFRA are not pollutants because they are neither "chemical wastes" nor biological materials. Therefore, the Interim Guidance concludes that NPDES permits are not required for pesticides applied consistent with FIFRA. A major issue in the *Headwaters, Inc. v. Talent Irrigation District* (9th Cir. 2001) 243 F.3d 526, was whether the application of pesticides constitutes discharge of a pollutant. The specific discharge that instigated the citizens' suit in that case was presumably not in compliance with FIFRA since the pesticide leaked into the creek at levels that killed 92,000 fish. The Interim Guidance points out these factual circumstances of the case. Normally, a holding in a case will be limited to its facts and broader statements in a decision, which are not required determinations of the facts in the case, are termed *dicta,* and need not be followed in future cases. Thus, USEPA, by referring to the "circumstances" of the *Headwaters* case, implies that to the extent the Ninth Circuit decision stated that all applications of aquatic pesticides—

including those in compliance with FIFRA—constitute discharge of a "pollutant," the statement is dicta for applications not in compliance with FIFRA, and therefore need not be followed. The weakness with this claim is that the conclusion by the Ninth Circuit--that all applications of aquatic pesticides, including applications consistent with FIFRA, constitute discharge of a pollutant--was necessary to the outcome of the case. In order to successfully bring a citizens' suit for CWA violations, a plaintiff must prove that the violations are likely to continue (*Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.* (1987) 484 U.S. 49, 64). The defendant irrigation district in the *Headwaters* case claimed that it had established new protocols and that no further releases into the creek were likely. The Ninth Circuit stated that an NPDES permit was necessary regardless of any impact from the pesticide applications, and therefore continuing violations of the CWA were likely if the district did not obtain a permit. Thus, while the "circumstances" of the *Headwaters* case were application of a pesticide not in compliance with FIFRA, the holding of the case was that any residual for pesticide application constitutes discharge of a pollutant and requires an NPDES permit whether or not the application was in compliance with FIFRA. Also, in the *League of Wilderness Defenders v. Forsgren* (9th Cir. 11/4/2002) 309 F.3d 1181, there is no indication that the pesticide application violated FIFRA. The Interim Guidance does not appear to try to distinguish the *Forsgren* case, and it is clearly in conflict with its holding. (USEPA issued a more recent guidance document on September 3, 2003, stating that the *Forsgren* case does apply in Ninth Circuit states.[1] It appears that the Interim Guidance and the more recent guidance documents are in conflict. In addition, as discussed above, there is no basis to distinguish the holdings in *Headwaters* and *Forsgren*.)

As discussed above, the USEPA Interim Guidance, which states that application of pesticides in conformance with FIFRA does not constitute discharge of a "pollutant," appears to be inconsistent with the Ninth Circuit decisions in *Headwaters* and, more recently, in the *Forsgren* case. In weighing the decisions of the federal appeals court, who presides over states, including California, and whose decisions are entitled to "great weight" against an Interim Guidance document by USEPA, which has not been formally promulgated and which is entitled to some "deference," following the Ninth Circuit decisions is a safer route. Federal guidance cannot justify actions in direct conflict with the controlling federal appellate court's decisions. Therefore, it appears that the current status of the law in California is that when pesticides are directly applied to waters of the United States, or applied directly above waters of the United States, the discharger will violate the CWA if it has not obtained an NPDES permit. The existence of conflicting federal guidance would simply create confusion and a false sense of security for dischargers who rely upon it. (The September guidance document concedes that the *Forsgren* decision does apply within the Ninth Circuit and that NPDES permits are required for silvicultural pest control. This guidance document should be revised to make that clarification.)

[1] Interpretive Statement and Guidance Addressing Effect of Ninth Circuit Decision in *League of Wilderness Defenders v. Forsgren* on Application of Pesticides and Fire Retardants.

Implications for Other Programs

It should also be noted that were the USEPA guidance to be finalized, i.e., a pesticide applied consistent with FIFRA is not a "pollutant," it could have ramifications beyond the issue of whether an NPDES permit is necessary. The State is required to adopt total maximum daily loads (TMDLs) in some situations where "pollutants" cause exceedances of water quality standards and the impaired waters are placed on a list [CWA section 303(d)]. There are numerous situations in California where pesticides are causing waters to be placed on the CWA section 303(d) list and TMDLs are being prepared. Generally, there is no evidence that these pesticides in receiving waters were the result of application of pesticides in violation of FIFRA requirements. (In fact, in its amicus brief to the court in *Headwaters*, USEPA pointed out that the FIFRA nationwide requirements are not adequate to protect individual water bodies.) Exclusion of pesticide residuals from the definition of "pollutant" could hinder these TMDLs. The USEPA Interim Guidance appears to acknowledge this problem and indeed states in a footnote that where pesticides are a "waste," such as in discharges of storm water regulated under CWA section 402(p), they are pollutants and require an NPDES permit. The Interim Guidance does not explain this result since there is generally no way to tell whether or not the discharges in the storm water were the result of applications in compliance with FIFRA. In any event, the implication for other programs and delineation of when a pesticide becomes a "waste" are not clear in the guidance document.

Recommendation

USEPA should revise the Interim Guidance to be consistent with Ninth Circuit precedent. Revisions should consider the implications of narrowing the definition of "pollutant" and the adverse effects this may have on other CWA programs. If USEPA wishes to provide an exemption from NPDES permit requirements for pesticides applied consistent with FIFRA requirements, it should instead seek such clarification by amending the CWA and/or the FIFRA.

If you require further assistance, please telephone Adam Laputz, the staff person most knowledgeable on this subject, at (916) 341-5554. You may also call Philip Isorena, Chief of the Regulations Unit, at (916) 341-5544.

Sincerely,

Celeste Cantú
Executive Director

cc: See next page